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SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
MOTION FOR JUDGMENT OF
ACQUITTAL PURSUANT TO ARIZ. R.
CRIM. P. 20**

Defendant James Arthur Ray, by and through undersigned counsel, hereby moves for judgment of acquittal pursuant to Arizona Rule of Criminal Procedure 20(a). This motion is supported by the following Memorandum of Points and Authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As this Court repeatedly has acknowledged, a criminal prosecution based on the set of facts presented in this trial is unprecedented in every respect. *Never*, in any jurisdiction, has there been criminal liability for consensual activities among competent adults where the activities involved are not inherently illegal. *No case* in any jurisdiction has imposed criminal punishment in circumstances even remotely close to those present here. Accidents happen in voluntary and lawful group endeavors of all kinds, but criminal liability does not follow. That is because of certain fundamental principles in our justice system, including that the State cannot impose criminal liability for conduct that reasonable people do not know is a crime, that competent adults exercise free will, and that actions that are neither unlawful nor obviously lethal do not constitute criminal homicide.

Nevertheless, the State of Arizona has charged James Ray with three counts of reckless manslaughter for causing the deaths of Kirby Brown (Count I), Liz Neuman (Count II), and James Shore (Count III) and has asked this Court to adopt its many novel legal theories. Over the course of this prosecution, the State repeatedly has alleged that Mr. Ray committed homicide through his omissions of failing to check on participants or stop the ceremony. In conjunction with this central claim, the State has alleged myriad actions by Mr. Ray inside the sweat lodge, including calling for rocks, pouring water, commencing rounds, and allegedly stating that participants who needed assistance would be helped after the pending round ended. The State has also sought to tie criminal liability to Mr. Ray's speech in encouraging participants to "play full on" and push through their limitations. As a result of these claimed acts and omissions, the State alleges the three decedents chose to remain in the sweat lodge despite extreme physical suffering and ultimately died of heat stroke. The State further alleges that Mr. Ray committed each and all of these purportedly causal acts with a criminally reckless mental state—that he was actually aware that each of his specific acts or omissions would likely cause the three decedents to die.

There are three fatal defects in the State's unprecedented prosecution of Mr. Ray, each of which is independently sufficient to require acquittal: (1) the State's omission-based prosecution

1 is barred by the absence of a legal duty; (2) the State has failed to prove *mens rea*; and (3) the
2 State has failed to prove causation. Permitting this prosecution to go forward in light of these
3 fundamental defects would require the Court to create at least twelve new rules of law, from the
4 permissibility of prosecuting omissions absent an established legal duty to act, to the role of free
5 will in proximate cause, to the meaning of a “gross deviation” from reasonable conduct. Such
6 lawmaking is not the role of a court in any case, much less a criminal case, where Due Process
7 entitles the accused to advance notice that his conduct is a crime. The novelty of this prosecution
8 violates that Due Process guarantee and forecloses the State’s arguments on each element of the
9 charged crimes.

10 II. SUMMARY OF ARGUMENTS

11 Under Arizona Rule of Criminal Procedure 20(a), ““where the trial judge has a
12 conscientious conviction that all the elements of an offense have not been established beyond a
13 reasonable doubt . . . he has not only the right but the duty to direct a verdict of acquittal.” *State*
14 *ex rel. Hyder v. Superior Court In and For Maricopa County*, 128 Ariz. 216, 223 (Ariz. 1981)
15 (quoting *State v. Schantz*, 98 Ariz. 200, 205 (1965), and citing *State v. Byrd*, 109 Ariz. 387
16 (1973); *State v. Ganster*, 102 Ariz. 490 (1967)). In this case, the State has failed to adduce
17 sufficient evidence to establish beyond a reasonable doubt *any* of the elements of reckless
18 manslaughter for *any* of the three decedents. Acquittal is required as a matter of law.

19 First, acquittal is required because there is no established legal duty to support criminal
20 punishment for Mr. Ray’s alleged omissions, as required by Arizona statute, the Due Process
21 Clause, and this Court’s rulings. See A.R.S. § 13-201; Trial Transcript, 4/6/11, at 73:7–12 (“THE
22 COURT: I have made clear, I think, there has to be a finding of the duty for an omission that lies
23 outside the criminal statute that’s relied on. At the same time, *there’s no mechanism to implement*
24 *that other than a Rule 20*, essentially, once the matter is at trial. So that’s noted.” (emphasis
25 added));¹ Under Advisement Ruling on MIL No. 8 to Exclude Testimony of Steven Pace,
26 4/11/11, at 1–2 (“To the extent that the State’s case rests on proof of omissions, the State must

27 ¹ Excerpts from Trial Transcripts are attached as Exhibits to this motion and are arranged in chronological
28 order.

1 establish that the Defendant had a legal duty in relation to the decedents and that the legal duty
2 derived from some source other than the criminal statutes defining the offense.”). No established
3 legal duty required Mr. Ray personally to implement medical screening, obtain an automatic
4 external defibrillator (AED), or hire and train emergency personnel. More critically, no
5 established legal duty relieved participants of their responsibility to care for themselves and
6 required Mr. Ray to perform the omitted acts on which the State’s case wholly depends: checking
7 on participants during the ceremony or stopping the ceremony at any particular time.

8 The absence of a legal duty defeats the State’s entire case because, but for Mr. Ray’s
9 supposed omission in failing to check on participants or stop the ceremony, there would be no
10 alleged crime. The State has never, and cannot, articulate a theory of the crime without the
11 alleged omission. The State’s attempt to recast Mr. Ray’s alleged omission as the act of
12 “continuing” the ceremony is legally invalid. And the fact that the State can identify particular
13 acts done before or after the omission is true in all omission cases and is legally irrelevant. These
14 backgrounds acts did not even arguably cause the deaths and were not done with a reckless
15 mental state. Nor would criminal punishment for the mere act of facilitating a sweat lodge—a
16 lawful, consensual activity among competent adults—comport with Due Process. *See* Section
17 IV.A.4.

18 Second, the State failed to prove *mens rea*. It bears emphasis here that Mr. Ray is charged
19 with three separate counts of manslaughter. In evaluating the Rule 20 motion, the Court must
20 make specific findings with respect to each of the three decedents. No jury could reasonably
21 conclude that the State proved beyond a reasonable doubt that Mr. Ray was “[1] aware of and
22 consciously disregard[ed] [2] a substantial and unjustifiable risk” that he would cause the three
23 decedents to die, or that [3] Mr. Ray’s action was a “gross deviation” from reasonable conduct.
24 A.R.S. § 13-105(10)(c).

25 The State did not prove that Mr. Ray had actual knowledge of the risk that he would cause
26 the three deaths. The testimony from participant witnesses—including trained medical doctors
27 and persons who were physically touching the decedents—proves beyond a reasonable doubt that
28 *nobody* knew. The State also failed to prove that Mr. Ray knew that the risk of death allegedly

1 created by his otherwise legal conduct was “substantial and unjustifiable”—meaning that the
2 probability of death was high. By all accounts, the deaths were shocking, not the sort of highly
3 likely consequence at issue in most reckless manslaughter cases, which involve illegal and
4 obviously life-threatening conduct like gunfire or drunk driving. The very notion the State
5 advances—that healthy adults would remain in a state of extreme physical suffering to the point
6 of death to impress their mentors or peers, prove themselves, or because someone told them to,
7 and that this is criminal, is extraordinary. Furthermore, the State failed to prove that Mr. Ray’s
8 actions were a “gross deviation” from reasonable conduct. A “gross deviation” connotes conduct
9 that is a “flagrant, extreme, outrageous, heinous or grievous deviation from” that standard. *In re*
10 *William G*, 192 Ariz. 208, 215 (1997). There can be no outrageous action where no one knew of
11 the risk of death and over fifty reasonable persons acted in the same way as Mr. Ray.

12 Third, the State failed to establish causation. The State has failed to prove proximate
13 causation, for no reasonable juror could conclude beyond a reasonable doubt that the three
14 decedents’ free will and volitional conduct did not constitute a superseding cause of the deaths.
15 In addition, the State has failed to prove proximate causation because it did not prove beyond a
16 reasonable doubt that the decedents died of heat stroke, and not the superseding cause of toxic
17 poisoning. The *State’s own* medical examiners and the treating physician for Liz Neuman and the
18 three surviving, critically ill patients testified that they cannot rule out toxic poisoning, or that
19 they *affirmatively believe* that toxins contributed to the deaths and expressed uncertainty as to
20 their conclusions that the deaths were caused by heat stroke. Dr. Lyon testified he held only a
21 51% level of confidence in his conclusions that Ms. Brown and Mr. Shore died of heat stroke and
22 thus he did not hold his opinions to any degree of medical certainty. Dr. Mosley testified that he
23 had “doubts” that only heat caused the death of Ms. Neuman. Indeed, because the State has failed
24 to prove how the decedents died, the State’s evidence fails even as to *factual* causation; no
25 reasonable juror could find beyond a reasonable doubt that specific conduct by Mr. Ray caused
26 three deaths *for which the medical cause is unknown*.

27 In addition, independent of the superseding causes, there is also no proximate causation
28 because the three deaths were not reasonably foreseeable. There is no basis for a legal conclusion

1 that three deaths were a “natural” or reasonably expected result of any of Mr. Ray’s alleged
2 actions. *See State v. Marty*, 166 Ariz. 233, 237 (App. 1990). This is not a case of gunfire or
3 drunk driving, where everyone knows that death is likely. The evidence is undisputed that no one
4 at the scene—neither Mr. Ray nor the participants seated immediately next to Ms. Brown, Mr.
5 Shore, and Ms. Neuman—had any idea that death would occur. *See infra* Section IV.C

6 Furthermore, the State cannot, consistent with the First Amendment, rely on Mr. Ray’s
7 speech as the *actus reus* in this case, and neither the jury nor this Court can consider Mr. Ray’s
8 speech as proof of causation.

9 Fourth, because of the three defects listed above, acquittal is also required on the potential
10 lesser included offense of negligent homicide. The only difference between negligent homicide
11 and reckless manslaughter is the defendant’s awareness of the risk. A.R.S. §13-105(10)(d).
12 Thus, the State’s failures on legal duty and causation defeat the negligent homicide charge.
13 Similarly, two prongs of the recklessness *mens rea*—“substantial and unjustifiable risk” and
14 “gross deviation”—are identical in the criminal negligence *mens rea*. The State’s failure to prove
15 these prongs therefore also bars conviction on the negligent homicide charge. The evidence also
16 does not support a finding that Mr. Ray “failed to perceive” a substantial and unjustifiable risk of
17 death. This inquiry pertains to the risks a defendant should have perceived *based on facts he*
18 *actually knew at the time*. Here, no reasonable jury could conclude beyond a reasonable doubt
19 that the facts known to Mr. Ray signaled that the three deaths were likely. It is legally misplaced
20 for the State to argue that Mr. Ray could have taken steps to investigate and discover *additional*
21 facts that would have signaled the risk of death. Vague notions that a defendant “should have
22 known better” are not and have never been a basis for criminal negligence. The question is
23 whether Mr. Ray heinously failed to perceive a risk that reasonable people would have perceived
24 based on known facts. The answer here is no.

25 In sum, three reasons, each independently sufficient, preclude a conviction for the three
26 charged counts of reckless manslaughter and the potential lesser included offense of negligent
27 homicide: (1) the State’s omission-based prosecution is barred by the absence of a legal duty; (2)
28 the State has failed to prove *mens rea*; and (3) the State has failed to prove causation.

1 These three deficiencies, and the unprecedented nature of a prosecution based on the
2 consensual, lawful acts of competent adults, amount to a request by the Government for new rules
3 of law. To deny this motion and permit the State's case to reach the jury, this Court would need
4 to radically alter the legal landscape by making *all* of the following twelve novel holdings:

5 Omissions and Legal Duty

- 6 1. That government may criminalize omissions even in the absence of a legal duty,
contravening *State v. Angelo*, 166 Ariz. 24, 27 (App. 1990);
- 7 2. That the government may recast omissions as acts, in violation of A.R.S §13-105, Arizona
8 case law, and the Due Process Clause;

9 Mens rea

- 10 3. That the government can prove that a defendant was aware of and consciously disregarded
11 a risk that his otherwise legal conduct would probably cause death—a standard requiring
actual, subjective knowledge—even where there is *no* affirmative evidence of the
12 defendant's knowledge, and where over 50 bystanders had no idea that death was likely;
- 13 4. That a risk of death in an otherwise legal activity qualifies as “substantial and
unjustifiable,” meaning highly probable and *different in kind* from a risk supporting civil
14 liability, where trained medical doctors participating in the same event did not foresee
possible deaths, where individuals seated next to or physically touching the decedents
15 experienced no symptoms, and even where only three of over 50 people exposed to the
same environment passed away;
- 16 5. That a defendant's otherwise legal conduct can be a “gross deviation” from that of a
reasonable person—meaning a heinous, grievous, or flagrant deviation—even when no
17 heightened standard of care applies, and where over 50 other observers acted in the same
way;

18 Causation

- 19 6. That a defendant can “actually cause” decedents to remain in place in spite of extreme
20 physical suffering even where he did not exert physical force or coercion,² and even where
the decedents acted volitionally and stated that they were ok;
- 21 7. That a competent adult's exercise of free will does not break the causal chain even where
22 the defendant owed the adult no special legal duty;
- 23 8. That it is “natural” and foreseeable for purposes of proximate cause that a healthy adult
24 will decide, as the State alleges happened here, to endure extreme physical conditions to
the point of death;

25
26 ² Coercion and duress are terms of art in the criminal law that incorporate rigorous criteria. *See, e.g.,*
27 *State v. Kinslow*, 165 Ariz. 503, 505 (1990) (“In order to constitute a defense . . . , the coercion or duress
28 must be *present, imminent and impending*, and of such a nature as to induce a well-grounded apprehension
of death or serious bodily injury if the act is not done.” (emphasis in original) (quoting *State v. Jones*, 119
Ariz. 555, 558 (App.1978)); *see also* A.R.S. §13-412 (defining duress).

- 1 9. That the Government can prove beyond a reasonable doubt that toxic poisoning was not a
2 superseding cause even where the medical examiners and treating physicians cannot rule
3 out poisoning with confidence;

4 First Amendment

- 5 10. That the Government can, consistent with the First Amendment, prosecute an individual
6 for the effect of his speech on a listener, without meeting the rigorous test set forth in
7 *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (per curiam), et al.;

8 Due Process

- 9 11. That consensual, lawful conduct by competent adults that is not on its own a crime and
10 has never been the subject of a criminal conviction can be criminalized for the first time
11 by this Court;
12 12. That this Court can make new law in all of the above respects without violating a criminal
13 defendant's Due Process right to advance notice that his conduct may constitute a crime.

14 At bottom, the State urges this Court to wade far into uncharted legal waters and attach
15 criminal punishment to conduct that, at most, could support only civil liability. This Court would
16 become a judicial outlier—the tribunal to “criminalize acts or omissions amounting to no more
17 than civil negligence,” in conflict with the Arizona courts’ efforts to “demarcate the border
18 between criminal recklessness and civil negligence.” *In re William G.*, 192 Ariz. 208, 212–13,
19 (App. 1997). Such judicial lawmaking would not only lack legal precedent, but would violate the
20 principles of Due Process and separation of powers that underlie our justice system. The Court
21 must grant Mr. Ray’s Rule 20 motion and order him acquitted of all charges.

22 **III. THE STATE’S ALLEGATIONS**

23 In addressing the defects in the State’s case, it is useful to begin with what the State has
24 alleged. Many of the basic facts of this case are undisputed. The Defense’s chief contention is
25 that the facts do not constitute a crime: the facts do not show that Mr. Ray caused the three
26 deaths, do not show that Mr. Ray acted with a reckless or culpable mental state, and run directly
27 into Constitutional legal bars, such as the Due Process limitations pertaining to criminal
28 omissions, and the First Amendment limitations pertaining to speech.

It bears emphasis that it is the State that has the burden of identifying how a largely
undisputed set of facts establishes the crime of reckless manslaughter as to each of the three

1 decedents. The State, not Mr. Ray or the Court, must identify Mr. Ray's allegedly criminal
2 conduct—the coincidence of the *actus reus* and *mens rea*. See A.R.S §13-105(6) (“‘Conduct’
3 means an act or omission and its accompanying culpable mental state.”). Moreover, the Due
4 Process Clause requires that the State specify clearly for the Court, the defendant, and the jury
5 what conduct constitutes the alleged criminal act. To that end, the State appears to have alleged
6 the following:³

7 **Omissions.** The State is prosecuting Mr. Ray for a crime of omission. The heart of the
8 State's case is that Mr. Ray committed reckless manslaughter by failing to check on participants
9 during the ceremony and failing to stop the ceremony soon enough. As the County Attorney
10 argued in her opening statement, “Mr. Ray did not stop the sweat lodge ceremony or check on
11 those inside to make sure that they were still okay.” Trial Transcript, 3/1/11, at 30:23–25 (Ms.
12 Polk's opening statement). This theory of the *actus reus* is how the State attempts to causally
13 connect Mr. Ray's conduct to the three deaths, and how the State seeks to explain why Mr. Ray—
14 and not any of the other persons who contributed to the heat or encouraged participants to
15 persevere—is guilty of crime. Including the central allegation that Mr. Ray failed to stop the
16 ceremony at an appropriate time, the State's alleged omissions include:

- 17 • Mr. Ray did not obtain medical histories and physical exams of participants.
- 18 • Mr. Ray did not provide emergency medical personnel on site.
- 19 • Mr. Ray did not make available an AED (automated external defibrillator) or an extensive
20 first aid kit.
- 21 • Mr. Ray did not check on the participants during the ceremony.
- 22 • Mr. Ray did not stop the ceremony even after one participant, Lou Caci, endured a non-
23 life-threatening injury, and one or more others received assistance in exiting the lodge.

24 ³ The State may not set forth new allegations or new theories of the crime in response to this motion.
25 Permitting the State to do so would violate Mr. Ray's basic due process right to know the “nature and
26 cause of the accusation against him” at a time when the opportunity remains to form a full and appropriate
27 defense. Ariz. Const. art. 2, § 24; see *State v. Von Reeden*, 9 Ariz. App. 190, 193 (1969) (defendant must
28 have “sufficient information to distinguish each of the counts and prepare for his defense”); *State v.*
Puryear, 121 Ariz. 359, 362 (App. 1979) (notice given the day before trial is insufficient); *Gault v. Lewis*,
489 F.3d 993, 1002, 1008-10 (9th Cir. 2007); see also *Lankford v. Idaho*, 500 U.S. 110, 126 (1991)
 (“Notice of issues to be resolved by the adversary process is a fundamental characteristic of fair
 procedure.”); *Jackson v. Virginia*, 443 U.S. 307, 314 (1979) (“[A] person cannot incur the loss of liberty
 for an offense without notice and a meaningful opportunity to defend.”). Because the State has rested and
 the defense's cross-examination of State witnesses is complete, Mr. Ray can no longer defend fully against
 any new allegations or theories the State may now put forth.

- 1 • Mr. Ray did not render medical aid after the ceremony ended and did not assist in calling
2 9-1-1.

3 As explained in Section IV.A, *infra*, none of these omissions can be the basis of criminal liability,
4 because Mr. Ray was under no established legal duty to act.

5 **“Continuing” the ceremony.** At times, the State has rephrased Mr. Ray’s alleged
6 omission of failing to stop the ceremony as the purported act of “continuing” the ceremony.

7 These allegations include:

- 8 • Mr. Ray “continued” the ceremony after Lou Caci burned his arm.
9 • Mr. Ray “continued” the ceremony after Dennis Mehravar yelled that he was having a
10 heart attack.
11 • Mr. Ray “continued” the ceremony after one or more participants were assisted out of the
12 sweat lodge.

13 The law does not, however, permit the government to prosecute omissions as acts. These
14 allegations therefore cannot support criminal liability. *See* Section IV.A.3.

15 **Actions without legal consequence.** The State’s other allegations pertain to behaviors
16 that may qualify as acts, but are legally inconsequential. Such allegations include:

- 17 • Mr. Ray encouraged participants to forego sleep and hydration prior to entering the sweat
18 lodge.
19 • Mr. Ray criticized Dream Team members for drinking wine while participants were on
20 the Vision Quest.
21 • Mr. Ray contributed to the heat inside the sweat lodge by requesting rocks and pouring
22 water on them.
23 • Mr. Ray determined the length of the ceremony and of each round.
24 • Mr. Ray instructed participants to leave between rounds rather than during a round.
25 • Regarding Count I, when a participant stated that Kirby Brown was displaying signs of
26 physical distress, Mr. Ray stated that assistance would be given after the pending round.⁴

27 These acts cannot support criminal liability because they were not the legal cause of the deaths
28 and were not done with a culpable mental state. In addition, criminalizing for the first time these
otherwise lawful actions pertaining to a group activity among consenting adults would violate the
Due Process Clause. *See* Sections IV.A., IV.B, IV.C.

⁴ Unlike many of the State’s alleged facts, this fact *is* in dispute, and the Court must observe the
evidentiary rules governing hearsay in evaluating the State’s allegation. The alleged statements cannot be
considered for the truth of the matter asserted—that is, to establish whether participants were in fact in
need of assistance or unresponsive. Indeed, the hearsay nature of such statements illustrates a fundamental
problem with the State’s case: the State has not proven who was speaking, to whom they were referring, or
whether Mr. Ray heard them. *See infra* Section IV.B.2.

1 **Speech.** The State also urges this Court to criminalize speech. Specifically, the State
2 claims the following speech was criminal because it allegedly induced behavior in others:

- 3 • Mr. Ray encouraged participants throughout the week to live honorably or “play full on.”
4 • Mr. Ray led exercises throughout the five-day retreat, including head shaving, holotropic
5 • Mr. Ray’s pre-sweat lodge orientation encouraged participants to push past physical
6 discomfort.

7 These forms of speech, the State alleges, “conditioned” the three decedents to follow Mr.
8 Ray’s commands and remain in the sweat lodge far past the point of physical distress. The First
9 Amendment bars this theory. *See* Section IV.C.3. In addition, Mr. Ray’s words, like his alleged
10 actions, lack legal consequence for purposes of the reckless manslaughter charges. If words of
11 encouragement were enough, all of the participants and Dream Team members who cheered
12 others to stay inside the sweat lodge would be guilty of the same crime.⁵

13 **IV. ARGUMENT**

14 Rule 20 provides that “[o]n motion of a defendant or on its own initiative, the court *shall*
15 enter a judgment of acquittal of one or more offenses charged in an indictment, information or
16 complaint after the evidence on either side is closed, if there is no substantial evidence to warrant
17 a conviction.” Ariz. Crim. Proc. R. 20(a) (emphasis added). In evaluating a Rule 20 motion, the
18 court “must remain cognizant of the fundamental mandate of our criminal code: ‘A defendant in a
19 criminal action is presumed to be innocent until the contrary is proved, and in case of a
20 reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.’” *State v.*
21 *Mathers*, 165 Ariz. 64, 66–67 (1990) (quoting A.R.S. § 13-115(A)).

22 To survive a Rule 20 motion, the State must have introduced evidence that “reasonable
23 persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt

24 ⁵ As explained, the State has advanced three legal theories, and multiple predicate acts for each theory.
25 Ultimately, however, the State must choose: “When the government chooses to prosecute under an
26 indictment advancing multiple theories, it must prove beyond a reasonable doubt at least one of the
27 theories to the satisfaction of the entire jury. *It cannot rely on a composite theory of guilt*” *United*
28 *States v. Beros*, 833 F.3d 455, 462 (3d Cir. 1987) (emphasis added). And because the State has introduced
“evidence of multiple criminal acts to prove [each] single charge,” it must also “elect the act which it
alleges constitutes the crime,” or else accede to a unanimity instruction requiring the jury to “agree
unanimously on a specific act that constitutes the crime before the defendant can be found guilty.” *State v.*
Klokic, 219 Ariz. 241, 244 (App. 2008).

beyond a reasonable doubt.” *State v. Mathers*, 165 Ariz. 64, 67 (1990). The evidence must be “more than a mere scintilla.” *State v. Landrigan*, 176 Ariz. 1, 4 (Ariz. 1993). Arizona courts possess, and heed, a *duty* to grant a Rule 20 motion and enter a judgment of acquittal where the evidence is insufficient. “If no substantial evidence exists that the defendant committed the crime, then the trial judge *must* enter a judgment of acquittal.” *State v. Neal*, 143 Ariz. 93, 98, (1984) (emphasis added).

**A. ATTACHING CRIMINAL LIABILITY TO MR. RAY’S OMISSIONS
WOULD VIOLATE ARIZONA STATUTORY LAW AND THE DUE
PROCESS CLAUSE, BECAUSE MR. RAY HAD NO LEGAL DUTY TO
ACT.**

The State’s core allegation is that Mr. Ray committed reckless manslaughter, and caused the deaths of three JRI attendees, by failing to check on participants or stop the sweat lodge ceremony. This theory, which hinges necessarily on omitted acts, is legally invalid for a criminal homicide charge. As this Court has correctly ruled, Mr. Ray cannot be found guilty of manslaughter on the basis of his omissions unless an established legal duty separate from the manslaughter statute required Mr. Ray to act. *See* Under Advisement Ruling on MIL No. 8 to Exclude Testimony of Steven Pace, 4/11/11, at 1–2 (“To the extent that the State’s case rests on proof of omissions, the State must establish that the Defendant had a legal duty in relation to the decedents and that the legal duty derived from some source other than the criminal statutes defining the offense.”). This Court’s ruling is well-supported by Arizona law and the Due Process Clause. *See, e.g., State v. Angelo*, 166 Ariz. 24, 27 (App. 1990) (“An omission to act can only be a crime if there is a duty to act imposed by law.”); *State v. Far West Water & Sewer*, 224 Ariz. 173, 186 (App. 2010) (“In the case of negligent homicide or manslaughter, the duty must be found outside the definition of the crime itself, perhaps in another statute, or in the common law, or in a contract.” (quoting *State v. Brown*, 129 Ariz. 347, 349 (App. 1981))). The question whether a legal duty exists is a matter of law for this Court to resolve, and does not depend on the particular facts of a case. *See, e.g., Gipson v. Kasey*, 214 Ariz. at 145 (“The issue of duty is not a factual matter; it is a legal matter to be determined before the case-specific facts are considered.”). This case cannot reach the jury if no legal duty bound Mr. Ray to act.

1 The requirement of a legal duty defeats the State's entire case and requires a judgment of
2 acquittal on all counts. As explained below, the State has identified no established legal duty, and
3 none exists. Nor does the Due Process Clause permit this Court to create a new duty to serve as
4 the basis for criminal liability. Furthermore, the law forbids the State from recasting Mr. Ray's
5 omissions as affirmative acts. The State's case has always hinged necessarily on actions Mr. Ray
6 failed to take. Without Mr. Ray's alleged omissions, there would be no alleged crime. As
7 explained below, the fact that the State can reword these alleged omissions as acts of
8 "continuing" the ceremony rather than failing to stop it, or can identify background acts that
9 occurred before and after the charged omission, is legally irrelevant.

10 **1. Mr. Ray Was Under No Legal Duty To Act.**

11 The State, as the party seeking to impose criminal sanctions, bears the burden of
12 establishing the existence of a legal duty. As this Court has noted, the State has not carried that
13 burden here. Mr. Ray's relationship with the decedents does not fall into any of the well-
14 established common-law special-relationship categories giving rise to a legal duty. As this Court
15 has already held, "[u]nlike the considerable body of law that has developed concerning the duty
16 of a coach or instructor to avoid increasing the risks inherent in learning or participating in a
17 sports-type activity, . . . there is apparently no such law relating to duties arising from what some
18 people consider to be, at least in part, religious or spiritual ceremonies that might produce 'altered
19 states' in some participants." Under Advisement Ruling on Defendant's Motion to Exclude
20 Proposed Expert Testimony of Douglas Sundling, issued 5/25/11, at 2. *See id.* ("[T]here is no
21 recognized, special legal standard of care applicable to the facts of this case that is comparable to
22 the standards applicable to cases involving physicians, coaches, and other professions or
23 occupation. . . .").

24 To illustrate by way of contrast, employers, for example, have long been required by the
25 common law to provide a reasonably safe workplace for their employees. *See, e.g., Smith v.*
26 *Goodman*, 6 Ariz. App. 168, 172 (1967). Employers are therefore on notice that a careless failure
27 to do so, resulting in physical injury, could give rise to civil liability; and a reckless or grossly
28 negligent failure that causes the death of an employee could trigger serious criminal sanctions.

1 Indeed, the Court of Appeal recently upheld the negligent homicide conviction of an employer-
2 corporation on this ground. *See State v. Far West Water & Sewer Inc.*, 224 Ariz. 173, 185-86
3 (2010). Employers have long planned their affairs against the backdrop of this legal duty, taking
4 measures specifically designed to guard against these predictable and established risks of criminal
5 liability. In contrast, no well-established common-law duty exists in this case. That absence
6 disposes of this case.⁶

7 Furthermore, although not necessary to the analysis, the existence of explicit waivers of
8 liability confirm that Mr. Ray possessed no duty here. This is not an argument that a defendant
9 can contract around criminal liability. Instead, it is an application of the well-settled rule that that
10 an express waiver *can* eliminate the existence of a *legal duty of care*. *See Valley Nat'l Bank v.*
11 *National Ass'n for Stock Car Auto Racing*, 153 Ariz. 374, 377 (App. 1987) ("Parties can
12 expressly agree in advance that the defendant shall not be liable to the plaintiff for the defendant's
13 negligence, absent public policy to the contrary."); *Hildebrand v. Minyard*, 16 Ariz. App. 583,
14 585 (1972) ("In an express assumption of risk situation the plaintiff expressly agrees in advance
15 that the defendant is under no obligation to care for him and shall not be liable for the
16 consequences of conduct which would otherwise be negligent."); The Law of Negligence in
17 Arizona § 7.12 (parties may expressly agree that potential defendant "owes no duty of care").
18 The waivers signed by the sweat lodge participants expressly warned that the retreat's activities
19 would include a "sweat lodge ceremony . . . involving tight, enclosed spaces and extreme
20 temperatures" and provided that the participants "assume full responsibility for and risk of any
21 injury sustained in connection with the Activities, whether caused by the negligence of the

24 ⁶ Any duty would of course have to pertain directly to Mr. Ray as an individual, not to JRI or Angel
25 Valley. The 2009 Spiritual Warrior Retreat was hosted and run by JRI, in conjunction with Angel Valley
26 Spiritual Retreat Center. The participants contracted with JRI and rendered payments to JRI and Angel
27 Valley in exchange for services. JRI and Mr. Ray are separate legal entities, and Mr. Ray is not liable for
28 an omission to carry out the duties of the corporation. *See Angelo*, 166 Ariz. at 27. Similarly, Mr. Ray is
no way responsible for omissions by Angel Valley. *Cf. State's Bench Memorandum Regarding Legal*
Duty, filed 3/21/11, at 5 (citing *Chiara v. Fry's Food Stores*, 152 Ariz. 398, 399 (1987), which states that
"a business proprietor has an affirmative duty to make and keep *his premises* reasonably safe for
customers" (emphasis supplied)).

1 Releasees or otherwise.” This explicit language is more than sufficient to negate any duty of
2 care which Mr. Ray could conceivably have owed to the sweat lodge participants.

3 **2. No Duty the State Could Identify Would Comport with Due Process**
4 **Notice Requirements.**

5 To permit this case to proceed to the jury, this Court would have to break new legal
6 ground and create a duty that no court to date has recognized. Such *ex post* lawmaking would
7 violate the Due Process Clause, which prohibits criminal liability for a failure to act when no
8 clearly established legal duty requires the action. In *Angelo*, for example, the Court of Appeals
9 held that corporate officers could not be criminally liable for failing to file certain corporate tax
10 returns, because “due process requires that, for purposes of imposing criminal liability on an
11 individual for a corporation’s failure to file a tax return, the statutes must clearly impose the duty
12 to file a return upon an identified individual.” 166 Ariz. at 27-28. This determination followed
13 straightforwardly from generally applicable due process requirements “that a penal statute’s
14 definitions be precise and definite.” *Id.* at 28 (citing *Pierce v. United States*, 314 U.S. 306 (1941);
15 *Lanzetta v. New Jersey*, 306 U.S. 451 (1939); *Connally v. General Construction Co.*, 269 U.S.
16 385 (1926)). “Due process,” the court emphasized, “demands that the statute provide fair notice
17 that engaging in the proscribed conduct risks criminal penalties.” *Id.* (citing *Papachristou v. City*
18 *of Jacksonville*, 405 U.S. 156 (1972); *Franzi v. Superior Court*, 139 Ariz. 556 (1984); *State v.*
19 *Zack*, 138 Ariz. 266 (App. 1983)). “The statute,” moreover, “must define the offense in terms
20 that people of average intelligence can understand.” *Id.* The New Jersey appellate court’s
21 dismissal of reckless manslaughter charges on due process grounds in *State v. Lisa*, 919 A.2d 145
22 (2007), a decision cited approvingly in *Far West*, 224 Ariz. at 186 n.8, is in accord. Relying on
23 U.S. Supreme Court precedent, the court held that “[a] duty of care, upon which a duty to act is
24 premised, must be so firmly established as to be beyond controversy or dispute if it is to provide
25 presumed notice.” *Id.* No legal duty consistent with these Due Process requirements applied to
26 Mr. Ray in this case.
27
28

1 3. **The Absence of a Legal Duty Forecloses All Liability In This Case,**
2 **Because The State's Case Hinges Necessarily On Mr. Ray's Alleged**
3 **Omissions.**

4 The absence of a legal duty infects the State's entire case, not merely a subset of the
5 State's allegations. Mr. Ray's alleged omissions are the *sine qua non* of the alleged crime. The
6 State cannot even articulate its criminal charge without including an omission. To be sure, the
7 State has identified other purported acts by Mr. Ray that occurred before or after the critical
8 omissions. But, as explained below, that is true in every omission case, and has no legal
9 consequence. The critical question is which conduct—the omission or surrounding acts—
10 constitutes the causal act and was done with a culpable mental state.

11 Here, it is only Mr. Ray's alleged omission to stop the ceremony that the State alleges has
12 criminal significance. Neither Mr. Ray's act of "continuing" the ceremony—an omission by
13 another name⁷—nor Mr. Ray's background acts of facilitating the ceremony by themselves
14 constitute the crime of reckless manslaughter. The State takes issue with Mr. Ray's
15 "continuation" of the ceremony only in the sense that by continuing, he failed to stop and help
16 people (an omission). The State does not allege, in other words, that continuing the ceremony
17 would, independently of an omission, have been a crime—*viz.*, even if the decedents had received
18 aid before their conditions became serious. The same is true for all of Mr. Ray's other alleged
19 acts, such as instructing participants to leave between rounds, or stating that assistance would be
20 given at a round's end absent an omission. Under these circumstances, the State's attempt to
21 avoid the duty requirement by recasting Mr. Ray's alleged omissions as affirmative acts fails.

22 a. **The Law Does Not Permit the Government to Recast Alleged**
23 **Omissions As Affirmative Acts.**

24 The law does not permit the State to semantically recast Mr. Ray's omissions and
25 prosecute them as affirmative acts. Acts and omissions are strictly defined and mutually
26 exclusive categories under Arizona law. *State v. Moran*, 162 Ariz. 524, 527 (App. 1989) ("The

27 ⁷ See generally *Pinder v. Johnson*, 54 F.3d 1169, 1176, n.* (4th Cir. 1995) ("While it is true that inaction
28 can often be artfully recharacterized as 'action,' courts should resist the temptation to inject this alternate
 framework into omission cases by stretching the concept of 'affirmative acts'") (rejecting argument
 that police officer had duty to protect victim of domestic violence).

1 criminal code defines ‘act’ and ‘omission’ contradistinctively.”). An “act” is “a bodily
2 movement.” A.R.S. § 13-105(2). An “omission” is a “failure to perform an act as to which a duty
3 of performance is imposed by law.” *Id.* § 13-105(27). The distinction has important Due Process
4 implications: the law is “reluctan[t] to criminalize even blameworthy omissions,” because
5 prohibiting an omission, and thereby requiring a person to act, is a “severe burden.” *Moran*, 162
6 Ariz. at 527 (quoting Fitzgerald, *Acting and Refraining*, 27 Analysis 133, 139 (1967)). In light of
7 this added burden, “[b]efore a person may be penalized for a mere failure to act ... due process
8 requires that the person have knowledge of the law[.]” *State v. Garcia*, 156 Ariz. 381, 382 (App.
9 1987).

10 Courts accordingly police the line between acts and omissions with care in the criminal
11 context, and do not tolerate the casual rewording of omissions as acts. For example, in *Moran*, a
12 case that explicitly considered the legal difference between acts and omissions, the defendant
13 employee was convicted of criminal damage for refusing, insubordinately, to decode a computer
14 program that he had previously encoded in the course of his employment. 162 Ariz. at 525, 528.
15 On appeal, the court first observed that because the criminal damage statute required “an *act* of
16 interference,” omissions were excluded from the statute’s ambit. *Id.* at 527. Turning to the
17 question whether the refusal to decode constituted an act or omission, the court acknowledged
18 that the “refusal to decode may surely be regarded as conduct,” that it could even be “conduct to
19 which blame can reasonably attach,” and that the defendant’s “voluntarily refrain[ing]” was not
20 the same as “a mere ‘nondoing.’” *Id.* at 527, n.5. That said, the court noted that an “act” requires
21 a bodily movement, and that the statutory definitions of act and omission are “contradistinctive.”
22 *Id.* Thus, the court concluded, the “defendant’s refusal was not an act within the criminal code.”
23 *Id.* The court therefore reversed the defendant’s conviction and directed the trial court to enter a
24 verdict of acquittal. *Id.* at 527. *See also People v. Abedi*, 595 N.Y.S.2d 1011, 1020 (N.Y. Sup.
25 Ct. 1993) (“*when informing an auditor of loans*, failing to mention their nonrecourse nature” was
26 not an overt act for purposes of establishing a conspiracy (emphasis added)).⁸

27 ⁸ The same principle has been applied as a matter of logic and statutory construction outside the criminal
28 context. In *Picco v. Town of Voluntown*, 989 A.2d 593 (Conn. 2010), the defendant owned and maintained
an athletic field on which a large ash tree was located. *Id.* at 596-97. The court held that the defendant
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1 Under these principles, the State is not permitted to assert, without any precedent or
2 authority, and contrary to existing and analogous authority, that Mr. Ray's failure to stop the
3 sweat lodge ceremony can be recast and prosecuted as the "act" of "continuing" the ceremony.
4 *Moran* leaves no doubt that act and omission are not simply two sides of the same behavioral
5 coin; a defendant's conduct must be either one or the other, and a failure to act, even when
6 accompanied by "voluntar[y]" or "deliberate" conduct, is an omission. *See Moran*, 162 Ariz. at
7 527.

8 Nor can the various background acts the State alleges in conjunction with the central
9 omission support criminal liability. As set out in Section III, these legally inconsequential
10 allegations include:

- 11 • Mr. Ray encouraged participants to forego sleep and hydration prior to entering
12 the sweat lodge.
- 13 • Mr. Ray criticized Dream Team members for drinking wine while participants
14 were on the Vision Quest.
- 15 • Mr. Ray contributed to the heat inside the sweat lodge by requesting rocks and
16 pouring water on them.
- 17 • Mr. Ray determined the length of the ceremony and of each round.
- 18 • Mr. Ray instructed participants to leave between rounds rather than during a
19 round.
- 20 • When a participant allegedly stated that Kirby Brown was displaying signs of
21 physical distress, Mr. Ray stated that assistance would be given after the pending
22 round.

23 These acts have no independent significance for purposes of criminal law; they are wholly
24 subsidiary to the omissions the State has alleged. Without the alleged omission, that is, the State
25 has alleged no crime. The legal analysis required for reckless manslaughter supports this

26 could not be held liable under a statutory nuisance provision for *failure* to remove the tree before its
27 collapse, despite having been told that the tree was dangerous and having obtained an estimate for the
28 tree's removal, because the statute premised liability on an "act." *Id.* at 600-01; *see id.* at 599 ("Common
usage does not equate a failure to act with an act ...[;] the [dictionary] definition of the word 'act' does not
denote something *not* done by a person."). In *Edmonds v. Shirley*, 116 So. 303 (Ala. Ct. App. 1928), the
question arose whether the sheriff was liable, under a statute imposing liability for the "acts" of his
deputies, for his deputy's failure to obtain money on a judgment delivered to him. *Id.* at 303. The court
held that the deputy's failure to collect was not an "act" and concluded that liability could not attach. *See*
id. ("Act denotes the affirmative. Omission denotes the negative. Act is the expression of will, purpose.
Omission is inaction. Act carries the idea of performance. Omission carries the idea of a refraining from
action.").

1 conclusion: the various background acts the State identifies did not cause the decedents' death,
2 see Section IV.C, and were not done with a culpable mental state, see Section IV.B. Not
3 surprisingly, there is also no case law supporting the proposition that Mr. Ray's acts in facilitating
4 the sweat lodge, a lawful activity among consenting and competent adults, can support criminal
5 liability.

6
7 **b. The State's reliance on Mr. Ray's background "acts" for
criminal liability would violate Due Process.**

8 The State's attempt to rely solely on Mr. Ray's background acts would also violate Due
9 Process, because Mr. Ray lacked constitutionally adequate notice that his lawful conduct and
10 speech, by themselves, constituted criminal manslaughter. As the Court of Appeal made clear in
11 *Angelo*, "[d]ue process demands that [a criminal] statute provide fair notice that engaging in the
12 proscribed conduct risks criminal penalties." 166 Ariz. at 28. A criminal statute must "give the
13 person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he
14 may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). If Arizona's
15 manslaughter statute is interpreted to permit conviction for leading a sweat lodge ceremony or
16 stating that aid would be rendered at a round's end, the statute would not live up to these due
17 process principles. Mr. Ray had no notice that such otherwise legal conduct with consenting,
18 competent adults could result in grave criminal sanctions, and therefore no reasonable opportunity
19 to adjust his behavior (and speech) accordingly. Even after months of searching, the Defense has
20 found no case law supporting this theory of criminal liability. It follows that no lay person in Mr.
21 Ray's position could possibly be on notice that his conduct is criminal.

22 Furthermore, there are no clear standards for enforcing the statute, so construed. No
23 person of ordinary intelligence would have any way of determining, before acting, which lawful
24 behaviors would later be deemed to violate the statute. A host of everyday situations would draw
25 close to—and presumably, in some cases, fall within—the manslaughter statute's reach: the rock-
26 climbing, scuba diving, hang-gliding, or parachuting instructor who encourages a student to "go
27
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1 for it,” followed by the student’s unintended death, or even the drill instructor who leads cadets in
2 a risky exercise. No precedent exists for this proposition.

3 **B. THE STATE HAS FAILED TO PROVE THAT MR. RAY POSSESSED**
4 **THE MENTAL STATE OF RECKLESSNESS.**

5 No reasonable juror could find the State’s evidence that Mr. Ray acted recklessly
6 “adequate and sufficient to support a conclusion of [Mr. Ray’s] guilt beyond a reasonable doubt.”
7 *Mathers*, 165 Ariz. at 67. “‘Recklessly’ means, with respect to a result or to a circumstance
8 described by a statute defining an offense, that a person is *aware of and consciously disregards a*
9 *substantial and unjustifiable risk that the result will occur* or that the circumstance exists. The
10 risk must be of such nature and degree that disregard of such risk constitutes a *gross deviation*
11 from the standard of conduct that a reasonable person would observe in the situation.” A.R.S.
12 §13-105(10)(c) (emphasis added).

13 Under this definition, to prove that Mr. Ray committed reckless manslaughter, there must
14 be sufficient evidence to establish beyond a reasonable doubt: (1) that Mr. Ray was actually,
15 subjectively aware of, and consciously disregarded, a risk that *his conduct* would cause Kirby
16 Brown, James Shore, and Liz Neuman to die; (2) that the risk of these three individuals’ deaths
17 arising from Mr. Ray’s conduct was substantial and unjustifiable, meaning it was highly likely to
18 occur; (3) and that Mr. Ray’s disregard of the risk of each of the three deaths was a gross
19 deviation from reasonable conduct in the situation, meaning that his conduct was “flagrant and
20 extreme,” and “outrageous, heinous, [and] grievous.” No reasonable jury could conclude that the
21 State’s evidence proves beyond a reasonable doubt any of these prongs of knowledge.

22 **1. The State’s Allegations**

23 As an initial matter, it bears emphasis that Mr. Ray’s allegedly culpable mental state must
24 coincide with the specific conduct by Mr. Ray that allegedly caused the decedents to die. It is not
25 enough for the State to allege an abstract awareness that an activity has risks (as all do) or that
26 heat can cause discomfort (as almost everything can). Instead, the State must prove that Mr. Ray
27 *actually knew*, when undertaking a *particular action*, that his conduct would likely cause the
28 decedents to die. The conduct that the State alleges satisfies this requirement, as set forth in

1 Section III, rests centrally on Mr. Ray's omissions in failing to check on participants or stop the
2 ceremony. In addition, the State alleges that Mr. Ray acted criminally by leading the ceremony,
3 contributing to the heat, and purportedly stating that a participant who needed aid would receive it
4 after the next round; and by his words of philosophy and motivation in the days and hours leading
5 up to the sweat lodge ceremony. None of these three categories of allegations satisfies the *mens*
6 *rea* requirement.

7 Before analyzing each prong of the *mens rea* requirement as to each decedent, two
8 overarching flaws in the State's case on knowledge bear mention. First, the evidence is that
9 *nobody knew* that the three decedents were dying. There were over 50 people in the sweat lodge
10 with Mr. Ray, and there is no testimony that any of them actually knew that any of the three
11 decedents was likely to die. Indeed, the testimony is that no one knew and all of them would
12 have helped had they known. This fact has implications for each of the prongs of knowledge.
13 First, it bars the State's attempt to prove circumstantially that Mr. Ray actually knew that the
14 three decedents were dying. This is not a case of gunfire or stabbing, where the activity is illegal
15 and the risk of death is clear to all onlookers, and thus the defendant's knowledge can be
16 assumed. Second, the fact that nobody knew confirms that Mr. Ray's conduct did not cause a
17 "substantial and unjustifiable" risk of death—a risk so obvious and highly probable that it cannot
18 be missed. Third, the fact that nobody knew the decedents were dying compels the conclusion
19 that Mr. Ray's failure to aid them, or his alleged statements that assistance would be given at the
20 end of the round (in roughly 15 minutes), was not a "gross deviation"—a heinous, egregious,
21 flagrant and wanton deviation— from the conduct of a reasonable person.

22 Second, and related, there is no special standard of care governing sweat lodge
23 facilitation. *See* Under Advisement Ruling on Defendant's Motion to Exclude Proposed Expert
24 Testimony of Douglas Sundling, filed 5/25/11, at 2 ("[T]here is no recognized, special legal
25 standard of care applicable to the facts of this case that is comparable to the standards applicable
26 to cases involving physicians, coaches, and other professions or occupation. . . ."). Thus, the
27 State cannot argue that the conduct of a "reasonable person . . . in the situation" refers to anything
28 other than the conduct of 50-plus other reasonable individuals inside the sweat lodge. The State's

1 suggestion that a “better” sweat lodge facilitator, like those who led non-JRI sweat lodges at
2 Angel Valley, would have behaved differently is legally irrelevant.

3 **2. “Awareness” and “Conscious Disregard”**

4 The State has failed to adduce any evidence of Mr. Ray’s “awareness” and “conscious
5 disregard” that the three decedents would likely die. Unlike the standard for civil negligence,
6 where inadvertence or “simple inattention” may be the basis for liability, “recklessness requires
7 that the person *actually be ‘aware’* of the risk being created by his conduct.” *William G.*, 192
8 Ariz. at 213 (emphasis added). In other words, the awareness “facet of recklessness requires
9 *subjective knowledge* of the risk by the accused before conviction can be had.” *State v. Serrano*,
10 145 Ariz. 498, 501 (App. 1985) (emphasis added). In *Far West*, for example, the court found that
11 the company officials were aware of substantial risks where they “*knew* the dangers associated
12 with confined spaces and sewer environments,” “*knew* about potentially lethal dangers posed by
13 toxic gases found in underground tanks,” “admitted that working in underground tanks was
14 unsafe,” and “posited that the death and injuries” at issue “occurred due to the toxic gases” in the
15 underground environment they provided. *Far West*, 224 Ariz. at 192 (emphasis added); Trial
16 Transcript, 3/10/11, at 294:4–12 (“THE COURT: And even the way you phrased it just now [Mr.
17 Hughes], what somebody should do as opposed to consciously disregarding. . . . There are issues
18 about what someone would know. And if you think in the Far West Water & Sewer, there’s a real
19 discussion in there about the *actual knowledge* of those regulations and those things.” (emphasis
20 added)). *See also State v. Cocio*, 147 Ariz. 277, 280 (1985) (in a manslaughter case, the
21 defendant was “aware of the risk” that he could cause a deadly accident where he “knew his
22 driving would be impaired” after consuming “mass quantities of alcohol”).

23 Mr. Ray had no such knowledge. Without the distorting lens of hindsight, the State’s
24 evidence does not show that Mr. Ray actually knew the decedents were on the verge of death
25 when, for example, he called for more rocks, or allegedly stated that aid would be rendered at the
26 round’s end. Instead, as detailed below, there is *no* evidence that Mr. Ray knew the three
27 individuals were dying. The evidence is that *nobody knew*. Ms. Brown, Mr. Shore, and Ms.
28 Neuman were *all* breathing, talking with participants around them—specifically telling others

1 they were “okay” or “fine”—and moving until the end of the ceremony. In addition, Mr. Ray had
2 instructed people to leave when they needed to, and the evidence is that many participants did
3 come and go throughout the ceremony. There is no evidence that he knew that the three
4 decedents were about to die:

5 **a. Kirby Brown (Count I)**

6 The evidence at trial was that Kirby Brown not only was *not* exhibiting signs of dying, but
7 was cheering on other participants by chanting “we can do it, we can do it.” Witness Melissa
8 Phillips testified that she heard these chants as of either “round 8,” or “close to the end” of the
9 ceremony. Trial Transcript 3/2/11, at 205:3–18 (testimony of Melissa Phillips). Although
10 Melissa Phillips stated that Kirby Brown’s chanting and breathing concerned her, Ms. Phillips
11 was assured by a man positioned close to Ms. Brown that “‘I’m here. It’s fine. She’s all right.’”
12 *Id.* at 200:6–9; Trial Transcript, 3/3/11, at 16:5–6, 181:9–19. *That man was not Mr. Ray. See id.*
13 *at 13:12–15:3.*

14 Dawn Gordon, who was next to Kirby Brown inside the sweat lodge, likewise heard Ms.
15 Brown chanting “we can do it, we can do it” as of the “sixth or seventh” round. Draft Trial
16 Transcript, 6/2/11, at 186:24–25, 189:16–17. So too did Mark Rock. Draft Trial Transcript,
17 6/1/11, at 172:6–8. Later, Ms. Gordon heard Kirby Brown breathing with “difficulty,” Draft Trial
18 Transcript, 6/2/11, at 195:4–9, and Ms. Gordon and James Shore moved Kirby onto her side, *id.*
19 *at 201:17–24.* Ms. Gordon heard Ms. Brown continuing to breathe until the end of the ceremony,
20 *id.* at 213:17–22. Ms. Gordon did not have a thought that Ms. Brown was going to stop
21 breathing. *Id.* at 204:18–20.

22 Nor did other participants know during the ceremony that Kirby Brown was dying. *See,*
23 *e.g.,* Trial Transcript, 3/4/11, at 150:17–20 (testimony of Laura Tucker) (Tucker did not know
24 there was anything wrong with Kirby during the sweat lodge); Trial Transcript, 3/9/11, 186:24–
25 187:13 (testimony of Dr. Nell Wagoner) (Dr. Wagoner didn’t know that Kirby was in distress
26 during the sweat lodge).⁹

27 ⁹ Mark Rock testified that he was concerned about Ms. Brown because he believed she sounded like she
28 was “gurgling [her] last breath” like he has seen “on TV.” Trial Transcript, 5/27/11, at 65:9–16. Mark
Rock is the *only* witness in the case to suggest that he had any inkling that Ms. Brown might be in serious
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1 Furthermore, although some testimony suggests that a participant made a comment in the
2 sweat lodge about Ms. Brown's condition, the State has failed altogether to prove that Mr. Ray
3 heard this statement, let alone that he understood from the statements that Ms. Brown was in life-
4 threatening condition. Dawn Gordon, the only witness who testified that she clearly heard the
5 alleged statement regarding Ms. Brown and could identify the speaker, testified that James Shore,
6 laying next to her, was the person who made the comment. According to Ms. Gordon, Mr. Shore
7 stated "I need help over here." Draft Trial Transcript, 6/2/11, at 208:8. Ms. Gordon testified that
8 "[i]t was not a voice where he projected. It wasn't a firm voice." *Id.* at 208:1-3. She did not
9 hear Mr. Ray say anything "until after the flap was closed," when he announced, as he had in
10 previous rounds, that "no one was leaving at that time." *Id.* at 208:12-14.

11 No other witness refuted Ms. Gordon's testimony or testified with knowledge that Mr.
12 Ray heard Mr. Shore's statement. The fact that other witnesses—Mark Rock, Debby Mercer,
13 Sara Mercer, and Fawn Foster—testified that they heard an unidentified speaker say that someone
14 or some people (possibly Ms. Brown) was unconscious or in trouble, and that they heard Mr. Ray
15 say something to the effect that the person would be helped at the end of the round, does not
16 satisfy the State's burden. Kim Brinkley is "sure" that when Mr. Ray stated that the person would
17 be helped at the end of the round, he was responding to Laura Tucker's comment regarding Liz
18 Neuman (who stated moments later that she wanted to stay in the lodge), not to Mr. Shore's
19 comment about Kirby Brown. *See* Draft Trial Transcript 6/2/11, at 72:15-73:5. And the
20 testimony of Brandy Rainey, who had temporarily and erroneously believed in the sweat lodge
21 that Mr. Ray was speaking to her when he was in fact speaking to someone else, underscores that

22 medical condition. His testimony is directly refuted by the testimony of other participants witnesses, and
23 by his own recorded statements to police.

24 In addition, the admission of Mr. Rock's potentially perjured testimony raises serious Due Process
25 concerns. The government's use of perjured evidence to secure a conviction violates the Due Process
26 Clause. *See, e.g., Napue v. Illinois*, 360 U.S. 264 (1959); *Pyle v. Kansas*, 317 U.S. 213 (1942); *Mooney v.*
27 *Holohan*, 294 U.S. 103 (1935). This is true even where the Government lacks definitive knowledge that
28 the testimony will be false; a Due Process violation occurs if the prosecutor had reason to know the
testimony would be false. *See, e.g., Hovey v. Ayers*, 458 F.3d 892, 916 (9th Cir. 2006). The comments of
Mr. Rock and his appointed public defender—an attorney appointed specifically because of the likelihood
that Mr. Rock might perjure himself—suggest strongly that Mr. Rock gave false testimony. Permitting the
jury to rely on his testimony under these circumstances would violate Due Process. *See* Defendant's
Request for In Camera Review and Motion to Strike Testimony of Mark Rock, filed 6/1/11.

1 it was difficult, inside the sweat lodge, to know who was speaking to whom. See Trial Transcript,
2 5/26/11, at 184:1–186:1.

3 And even assuming (for argument) that Mr. Ray heard the alleged statements, there is no
4 evidence that Mr. Ray, or any reasonable person, actually understood from the comment that Ms.
5 Brown was on the verge of death. The witnesses' testimony as to what someone else said is
6 hearsay and cannot be considered for the truth of the matter asserted—that Kirby Brown was “in
7 trouble,” or that people were “unconscious.” Moreover, the verbiage that a person is “in trouble,”
8 not responding, or “unconscious” would not suggest death to any reasonable person in the
9 circumstances. As this Court has expressly held, “unresponsiveness” and “apparent loss of
10 consciousness” are among the types of symptoms that are “*not* sufficiently similar” to death to
11 even show “*relevance* to the issue of knowledge (conscious disregard of a substantial and
12 unjustifiable risk) in a manslaughter case.” See Under Advisement Ruling on MIL No.1, 2/3/11,
13 at 2 (emphasis added). It follows *a fortiori* that if the symptoms are not even *relevant* to
14 knowledge, they cannot *prove* knowledge. Indeed, this Court has held that even “[a]ssuming that
15 the Defendant was aware of the various signs and symptoms associated with pre-2009
16 participants, this knowledge would not constitute notice that he allegedly was subjecting these
17 participants to a substantial and unjustifiable risk of death.” *Id.* at 3. See also, e.g., Trial
18 Transcript, 3/18/11, at 65:14–21 (testimony of Dr. Jeanne Armstrong) (“passed out” and
19 “unconscious” are equivalent in her mind); *id.* at 68:20–69:7 (Dr. Armstrong did not perceive any
20 serious medical condition in hearing that Amy was “passed out” or “unconscious”). The State
21 has presented no evidence to the contrary.

22 **b. Liz Neuman (Count II)**

23 The evidence at trial showed that even the people who were immediately next to Liz
24 Neuman and physically touching her did not know she was at risk of dying. As late as the 7th or
25 8th round, Ms. Neuman was responsive and confirmed that she was ok and did not need to leave
26 the lodge. On these facts, as set forth below, there is no possibility that Mr. Ray or anyone else
27 could have known that Ms. Neuman was likely to die.

- 1 • Liz Neuman suggested that she and Laura Tucker “tap each other” during the
2 ceremony, and they did so at “regular intervals.” Trial Transcript, 3/4/11, at 45:12–
3 46:11 (testimony of Laura Tucker).
- 4 • When Liz Neuman shifted positions, Laura Tucker tapped her, and Liz “tapped
5 back.” At some point during the ceremony, Laura tried to grab or pull Liz away
6 from the pit, and Liz “brushed [Laura’s] hand away.” *Id.* at 49:18– 50:11
7 (testimony of Laura Tucker).
- 8 • After the sixth round, Laura Tucker stated that she was “concerned about Liz.” *Id.*
9 at 60:3–4. Mr. Ray stated “Liz has done this before, Laura. She knows what she’s
10 doing.” *Id.* at 60:13–14. (Ms. Neuman has done 5 other sweat lodge ceremonies
11 with Mr. Ray in years prior.) Laura “decided [she] would ask Liz,” so she
12 “touched her on her left shoulder to get her attention.” *Id.* 61:8–11.
- 13 • Laura then asked, “Liz, are you okay?” *Id.* at 61:11. Liz “turned her head to the
14 left,” responded “yes,” and she spoke “loud enough” that Laura could hear her. *Id.*
15 at 61:15, 21, 25. Laura then asked “another question:” “if [Liz] needed to get out.”
16 *Id.* at 62:6–8. Liz said “no.” *Id.* at 62:12, 16. Neuman’s response was “promp[t]”
17 and “clea[r].” *Id.* at 64:1–4.
- 18 • After that conversation, Liz was still breathing. *Id.* at 64:24–25.
- 19 • Liz was also leaning against Laura’s legs, as Mr. Ray had advised people they
20 might wish to do. *See id.* at 63:4–7.
- 21 • If Laura Tucker had know that Liz Neuman was in a life-threatening situation, she
22 “would have absolutely done everything that I could to help her and anyone else
23 that was at risk.” *Id.* at 152:1–7.
- 24 • But Laura Tucker did not render aid, because she *did not perceive the risk.* *Id.* at
25 152:10–17 (“I went by what she told me. I went by how -- you know -- initially
26 when I spoke out to Mr. Ray, I still wasn’t satisfied. So I asked her. And I went
27 by what she said. I had no idea that there was any cause for immediate concern
28

beyond that. If I had, I would have done everything within my power to stop it and get her out.”).

- Laurie Gennari, on whom Liz Neuman also leaned during the sweat lodge ceremony, corroborated the exchange between Liz and Laura Tucker. *See* Trial Transcript, 3/18/11, at 197:8–197:14 (after the 6th round, Laura Tucker asked Liz if she wanted to leave and Liz responded no). Like Ms. Tucker, Ms. Gennari had no idea that Liz Neuman was dying. Trial Transcript, 3/22/11, at 151:8–18.
- There is no evidence in the record to the contrary. Not a single participant testified to having any awareness that Liz Neuman was on the verge of death. *See, e.g.*, Trial Transcript, 3/9/11, at 186:24–187:8 (testimony of Dr. Nell Wagoner) (Dr. Wagoner did not know that Liz was in distress during the sweat lodge); Trial Transcript, 3/17/11, at 162:2–163:3 (testimony of Lou Caci) (despite his physical contact with Ms. Neuman, Mr. Caci did not know that Liz Neuman was dying, and would have done everything in his power to save her had he known).

c. James Shore (Count III)

The evidence at trial was that James Shore was alert and moving around near the end of the ceremony. Debby Mercer testified that she saw James Shore assist another participant to the door of the sweat lodge during the “sixth or seventh” round. *See* Trial Transcript, 4/8/11, 172:14–175:13. Ms. Mercer, who knew she was observing James Shore because she recognized his face, also observed that Mr. Shore “went back in” after assisting the other participant. *Id.* Similarly, Dawn Gordon observed Mr. Shore assist Sydney Spencer in leaving the sweat lodge then return to his place next to Ms. Gordon inside the sweat lodge. Draft Trial Transcript, 6/2/11, at 201:10–12. When Mr. Shore returned to the lodge, Ms. Gordon continued to converse with him during the seventh round, and continued to hear Mr. Shore speaking to Kirby Brown. *See id.* at 204:3–17.

Moreover, there is no evidence that Mr. Shore displayed signs that he was near death. Several witnesses testified that they did *not* hear Mr. Shore or anyone else indicate that Mr. Shore was having any problems at all. *See, e.g.*, Trial Transcript, 3/4/11, at 150:21–23 (testimony of

1 Laura Tucker) (Ms. Tucker did not hear anyone say that something was wrong with Mr. Shore
2 during the ceremony); *id.* 3/9/11, 43:9–11 (testimony of Jennifer Haley) (Ms. Haley never heard
3 anyone say that James Shore needed help during the ceremony); *id.* 3/9/11 at 186:24–187:11
4 (testimony of Dr. Nell Wagoner) (Dr. Wagoner never heard James Shore or Liz Neuman say
5 anything and did not know they were in distress). And while Mark Rock stated his belief that Mr.
6 Shore was in some sort of distress, he testified that Mr. Shore stated that he did *not* want to switch
7 places and was “fine right here.” *See* Trial Transcript 5/27/11, at 57:21–58:2. Mr. Rock believed
8 that Mr. Shore appeared “distressed, but firm in his conviction.” *Id.*

9 This evidence defeats all three counts of reckless manslaughter. Indeed, the Court need
10 not reach the related question of whether Mr. Ray not only was actually, subjectively aware the
11 Ms. Brown, Mr. Shore, and Ms. Neuman were likely to die, but also “consciously disregarded”
12 that risk by proceeding with the conduct that allegedly created the risk of death.¹⁰

13 3. “Substantial and Unjustifiable Risk”

14 The phrase “substantial and unjustifiable” risk pertains to the likelihood of harm—that is,
15 the “probability” that the result will occur. *In re William G.*, 192 Ariz. at 213–14; *Com. v.*
16 *Ruddock*, 25 Mass. App. Ct. 508, 513 (Mass. App. 1988). Whereas the defendant’s awareness of
17 the risk is a subjective inquiry, the question whether the risk was substantial and unjustifiable is
18 evaluated objectively. In evaluating this prong of knowledge, a court must ask: how likely was it,
19 given the facts that were known at the time, that death would result from the defendant’s conduct?

20 The probability must be high. A “substantial and unjustifiable risk” is so great that it is
21 “‘different in kind’ from the merely unreasonable risk sufficient for civil negligence.” *Far West*,
22 224 Ariz. at 200 (quoting *In re William G.*, 192 Ariz. at 214) (emphasis added). Thus, if the jury
23 concludes that the actor’s “misbehavior” creates an *unreasonable* risk that the harm will occur,
24 the actor may *only* be civilly liable, and *not* criminally liable. *See In re William G.*, 192 Ariz. at

25
26 ¹⁰ Conscious disregard requires that the defendant, in spite of his knowledge of the risk that accompanies
27 his conduct, proceeded anyway. *See Far West*, 224 Ariz. at 193 (despite defendants’ knowledge of the
28 risks created by their noncompliance with safety regulations, the company officers “knowingly violat[ed]
OSHA regulations and permitt[ed] . . . employees to enter dangerous, life-threatening underground tanks
without training, equipment, safety measures, or rescue capability.”).

1 213–14. For criminal liability, the risk must be *so* much greater—that is, the harm arising from
2 the conduct must be so much more likely to occur—as to essentially be a different species of
3 likelihood. *See id.* at 211, 214.

4 By way of illustration, the case law essentially provides that risks fall into three
5 categories. In the first category, there may be *a* risk that death will occur—this is true of almost
6 any human activity—but death is not reasonably foreseeable. In such a case, no liability attaches.
7 *See, e.g., Chavez v. Tolleson Elementary School Dist.*, 122 Ariz. 472, 478 (App. 1979) (student’s
8 abduction and death was not a foreseeable result of school’s negligent supervision). In the second
9 category, the risk of death is sufficiently likely as to be “unreasonable.” In this category, civil
10 liability attaches. *See, e.g., In re William G.*, 192 Ariz. at 214 (rough-housing in shopping cart in
11 parking lot created unreasonable risk of damage to property); *Williams v. Wise*, 106 Ariz. 335,
12 343 (1970) (backing up a 60-foot truck in a construction zone where people were working may
13 have been negligent). Criminal liability is possible only in the third category: the substantial and
14 unjustifiable risk, a risk so great as to be *different in kind* from the unreasonable risk involved in
15 civil liability. The case law clusters around those risks that are so patent and obvious that a
16 reasonable person could not miss them. *See, e.g., State v. Ruelas*, 165 Ariz. 326, 328–29 (App.
17 1990) (“swinging a knife” “with enough force to drive [it] ten inches into [the victim’s] body”);
18 *State v. Valenzuela*, 194 Ariz. 404, 407 (1999) (shooting a person in the face); *Cocio*, 147 Ariz. at
19 280 (driving after consuming “mass quantities of alcohol”); *Far West*, 224 Ariz. at 200 (flouting
20 workplace regulations in spite of the “obvious and recognized health hazards” inherent in a
21 sewage treatment facility).

22 No reasonable jury could conclude that any knowledge possessed by Mr. Ray indicated a
23 substantial and unjustifiable risk that his actions would cause the three decedents to die. As noted
24 above, there is no evidence of any indication that James Shore, Kirby Brown, and Liz Neuman
25 were dying; the evidence is that they displayed signs of well-being until shortly before the
26 ceremony concluded. ***That alone precludes the State’s attempt to show that Mr. Ray was***
27 ***reckless.*** Nor can a risk be deemed “substantial and unjustifiable” where trained medical doctors
28 participating in the same event did not foresee possible deaths, where individuals seated next to or

1 physically touching the decedents experienced no symptoms, and when only three of over 50
2 people exposed to the same environment passed away. Furthermore, the State's allegation is that
3 the decedents endured extreme physical suffering, to the point of death, in order to prove
4 themselves or impress others. Such conduct is not foreseeable. It is *extraordinary*. To find that
5 the risk of death was "substantial and unjustifiable" in these circumstances, the Court would need
6 to create a new legal rule, significantly lowering the standard already set by Arizona courts.

7 In an attempt to avoid this conclusion, the State may suggest that signs that *other*
8 individuals in the sweat lodge experienced *non-life-threatening* discomfort indicated a substantial
9 and unjustifiable risk of death. That argument lacks merit.

10 The evidence of distress inside the sweat lodge relates *solely* to conditions that are *not*
11 life-threatening. Witnesses testified that Lou Caci burned his arm during the ceremony when he
12 inadvertently made contact with the rock pit. The burn was not life-threatening, and after
13 receiving first aid, Mr. Caci returned to the ceremony and completed it. Some witnesses also
14 testified, although in conflicting fashion, that some participants received assistance in exiting the
15 lodge during the ceremony. There is no evidence that Mr. Ray or anyone else knew that these
16 participants were seriously ailing, as opposed to hot, weak, or dizzy. A burned arm and the need
17 for physical assistance in exiting the lodge are akin to the non-life-threatening conditions that the
18 Court has specifically ruled are different in kind from death as a matter of law. *Cf.* Trial
19 Transcript, 4/26/11, at 13:11–14 (noting that the difference between symptoms "that were
20 apparent after prior sweat lodges and the effects that were apparent after the 2009 sweat lodge" is
21 "essentially, a distinction in kind, not just [degree]."); Under Advisement Ruling on MIL No.1,
22 2/3/11, at 3 ("Assuming that the Defendant was aware of the various signs and symptoms
23 associated with pre-2009 participants, this knowledge would not constitute notice that he
24 allegedly was subjecting these participants to a substantial and unjustifiable risk of death.").

25 Even assuming the jury concluded that Mr. Ray actually observed Mr. Caci's arm, or had
26 actual knowledge that participants received assistance to exit the sweat lodge, such knowledge
27 would be insufficient as a matter of law to indicate a substantial and unjustifiable risk that *those*
28 individuals were likely to die, let alone that three *other* individuals would die. This is not a case

1 of shooting someone in the face, stabbing them, driving drunk, or deliberately violating known
2 federal regulations intended to ensure safety. Knowledge of the non-life-threatening discomfort
3 or symptoms experienced by persons other than the decedents would not even constitute notice of
4 an *unreasonable* risk that the three decedents would die, as would be necessary for *civil* liability.
5 And again, in *all* events, any warning signs related to other individuals were *refuted* by the
6 affirmative indications that the three decedents *were not dying*.

7 The reality in this case is that everyone—Mr. Ray, the State of Arizona, and all of the
8 sweat lodge participants who have testified—*wishes* that someone had known that the decedents
9 were dying. But as a matter of fact and law, not only did Mr. Ray not know, but there was
10 objectively no indication of a substantial and unjustifiable risk that the deaths would occur.

11 **4. “Gross deviation” from reasonable conduct in the situation**

12 For related reasons, no reasonable jury could conclude that the evidence established
13 beyond a reasonable doubt that Mr. Ray’s conduct in disregarding the substantial and
14 unjustifiable risk of death was a “gross deviation” from what would be reasonable in the situation.
15 A “gross” deviation is ““flagrant and extreme”” and ““outrageous, heinous, grievous.”” *William*
16 *G.*, 192 Ariz. at 214–215 (quoting dictionaries). It requires a “markedly greater” “deviation from
17 acceptable behavior . . . than the mere inadvertence or heedlessness sufficient for civil
18 negligence,” *id.* Thus, an individual’s conduct may fall short of the standard of care without
19 giving rise to criminal liability. *See id.* (“We do not doubt that the juvenile’s conduct in this case
20 was a sufficient deviation from the standard of conduct applicable”). If the conduct is not “a
21 flagrant, extreme, outrageous, heinous or grievous deviation from that standard,” it is not “gross”
22 for purposes of criminal liability. *See id.*

23 Here, the State’s evidence cannot show that Mr. Ray’s conduct was a gross deviation from
24 what was reasonable in the situation. As noted earlier, this Court clearly and correctly held that
25 there is no special, heightened standard of care for a person conducting a sweat lodge. Instead,
26 the reasonable person standard applies in its usual sense. Under Advisement Ruling on
27 Defendant’s Motion to Exclude Proposed Expert Testimony of Douglas Sundling, issued 5/25/11,
28 at 2. *See id.* (“[T]here is no recognized, special legal standard of care applicable to the facts of

1 this case that is comparable to the standards applicable to cases involving physicians, coaches,
2 and other professions or occupation . . .”). Applying the reasonable person standard, there
3 simply can be no “gross deviation” where no one was aware of the risk. Here, all other witnesses
4 in the same situation, some of whom are medical doctors with specialized training that Mr. Ray
5 lacks, and some of whom were physically touching and speaking with the decedents before they
6 died, *also* were not aware of a risk of death and therefore *also* did not take corrective action. *See*,
7 *e.g.*, Trial Transcript, 3/9/11, at 49:12–50:25 (testimony of Jennifer Haley) (Ms. Haley would
8 help if someone was dying); *id.* at 184:20–185:14, 187:14–18 (testimony of Dr. Nell Wagoner)
9 (Dr. Wagoner did not perceive that people needed help and would have helped if she’d known
10 people needed help); *id.* 3/18/11, at 20:18–21:3 (testimony of Dr. Jeanne Armstrong) (Dr.
11 Armstrong would provide aid if someone was in medical distress); *id.* 3/4/11, at 151:9–151:18,
12 152:5–7 (testimony of Laura Tucker) (Ms. Tucker “had no idea that there was any cause for
13 immediate concern” regarding Liz Neuman, and if she had known, she “would have done
14 everything within my power to stop it and get her out.”); *id.* 3/22/11, at (testimony of Laurie
15 Gennari) (Ms. Gennari would have done something if she knew Liz Neuman was dying); *id.*
16 4/20/11, at 195:20–196:1 (testimony of Debby Mercer) (Ms. Mercer would have helped if
17 someone was dying); *id.* 6/2/11, at 204:1–20, 213:17–22 (Ms. Gordon was interacting with Mr.
18 Shore and Ms. Brown as late as the seventh round, and did not know they were in serious
19 physical danger).

20 **C. THE STATE HAS NOT PRODUCED SUBSTANTIAL EVIDENCE THAT**
21 **MR. RAY’S CONDUCT CAUSED THE DECEDENTS’ DEATHS**

22 The State failed to prove that Mr. Ray’s conduct was the legal cause of the decedents’
23 deaths. In Arizona, “[a] person commits manslaughter by [r]ecklessly causing the death of
24 another person.” A.R.S. §13-1103. “Because causation is an element of the charged offense, the
25 State has the burden of proving causation.” *State v. Sucharew*, 205 Ariz. 16, 25–26 (App. 2003).
26 “In Arizona, both ‘but for’ causation and proximate cause must be established in a criminal case.”
27 *Marty*, 166 Ariz. at 236. In addition, because proximate cause does not exist where an
28 intervening force constitutes a superseding cause, the State also has the burden of proving that a

1 superseding cause did not cause the deaths. *Sucharew*, 205 Ariz. at 25–26. Here, the evidence at
2 trial shows the State does not even know how the decedents died. The State’s evidence fails at
3 each required prong of causation.

4 At the outset, it bears repeating the State’s allegations regarding Mr. Ray’s purportedly
5 causal conduct. The State’s central allegation is that Mr. Ray caused the three deaths by his
6 omissions in failing to check on participants or stop the ceremony. In addition, the State alleges
7 that Mr. Ray acted criminally by contributing to the heat in the sweat lodge, by allegedly stating
8 that a participant who needed aid would receive it after the next round; and by his speech in the
9 days and hours leading up to the sweat lodge ceremony. *See supra* Section III. In addition to the
10 other legal bars already discussed, none of these alleged omissions, actions, or motivational
11 words constitutes the actual or legal cause of the three deaths.

12 In particular, the State’s case on causation suffers from four independent, dispositive
13 flaws. Each flaw is colored by the glaring fact that the State has failed to prove how the
14 decedents died. Although the State has insisted for the entirety of this litigation that the decedents
15 died of heat stroke, *see, e.g.*, Trial Transcript, 3/1/11, at 5:17–25, 18:20–24, 19:5–12, 27:5–8,
16 34:20–21, 37:9–16 (Ms. Polk’s opening statement), there is not sufficiently substantial evidence
17 to support this theory. Instead, as detailed below, the evidence shows that the decedents did *not*
18 have the clinical symptoms for heat stroke, and that the decedents *did* have symptoms of
19 poisoning.¹¹ The four resultant defects are as follows: (1) the State has failed to prove that the
20 decedents’ free will was not a superseding cause of the deaths; (2) the State has failed to prove
21 that a superseding cause such as toxic poisoning was not the medical cause of the deaths; and (3)
22 the State has failed to prove proximate cause, because the deaths were not reasonably foreseeable;

23 ¹¹ The State may argue that they need not prove how the decedents died. This argument is specious. To
24 be sure, it is not a requirement in every criminal case that the prosecution prove *precisely* how a victim
25 died. In *Far West*, for example, it would not have mattered whether the cause of death was poisoning by
26 the toxic fumes or drowning in the vat of sewage after fainting; both would have been directly attributable
27 to the culpable conduct of the defendant. *See* 224 Ariz. at 194; *see also State v. Slover*, 220 Ariz. 239, 244
28 (App. 2009) (precise medical cause of death immaterial where death indisputably resulted from
defendant’s drunk driving). Here, however, the evidence entirely fails to show whether the deaths were
caused by heat, as the State has alleged, or by toxins—an unforeseeable, superseding cause. On this
record, as described below, there is no way to conclude the Mr. Ray’s conduct was the actual *or* legal
cause of the three deaths.

1 and (4) the State has failed to prove even actual causation, because no reasonable juror could
2 conclude beyond a reasonable doubt that specific acts by Mr. Ray's caused the decedents to die.

3 **1. The State Has Failed To Prove Proximate Causation.**

4 **a. The State Has Failed to Prove That The Decedents' Free Will**
5 **Was Not A Superseding Cause of the Deaths.**

6 A defendant's act is not a proximate cause of a victim's death if an intervening event acts
7 as a superseding cause. *See State v. Superior Court In and For County of Maricopa*, 186 Ariz.
8 363, 366 (App. 1996) ("[A]n act cannot be said to be the cause of a death if the chain of natural
9 effects and causes between them is broken by intervening events which are abnormal or
10 unforeseeable."). An intervening force constitutes a superseding cause when the event is
11 "unforeseeable and, with benefit of hindsight, abnormal or extraordinary." *State v. Bass*, 198
12 Ariz. 571 (2000); *see also* Jury Instruction 2.03 ("Proximate cause does not exist if the chain of
13 natural effects and cause either does not exist or is broken by a superseding intervening event that
14 was unforeseeable by the defendant and, with the benefit of hindsight, may be described as
15 abnormal or extraordinary."). Because the absence of a superseding cause is necessary to
16 proximate causation, the State has the burden of proving that no superseding cause intervened:
17 "[A] defendant has no obligation to establish the existence of a superseding cause. Instead, it is
18 the State's burden to prove all elements of the offense, beyond a reasonable doubt." *Sucharew*,
19 205 Ariz. at 25-26; *see also* Jury Instruction 2.03 ("The State must prove beyond a reasonable
20 doubt that a superseding intervening event did not cause the [death].").

21 The State has failed to show that the decedents' free will and volitional behavior did not
22 constitute a superseding cause. The majority rule in the case law is that a victim's volitional act
23 *does* constitute a superseding cause that breaks the chain of causation: "Cases have consistently
24 held that the 'free will of the victim is seen as an intervening cause which ... breaks the chain of
25 causation.'" *Lewis v. State*, 474 So.2d 766, 771 (Ala. Crim. App. 1985) (quoting Brenner, *Undue*
26 *Influence in the Criminal Law: A Proposed Analysis of the Criminal Offense of "Causing*
27 *Suicide*," 47 Albany L.Rev. 62, 63 (1982)). Under this principle, even if a defendant negligently
28 creates a risk of injury or death, the injured party's volitional conduct giving rise to the injury

1 breaks the chain of proximate cause and absolves the defendant of liability. *See, e.g., Lewis,*
2 *supra* (defendant not guilty of negligent homicide for victim's death in game of Russian
3 Roulette); *Lemos v. Madden*, 200 P. 791, 798 (Wyo. 1921) (plaintiff's deliberate decision to
4 attempt to save defendants' sheep in dangerous conditions was superseding cause of his injuries);
5 *Johnson v. Wal-Mart Stores, Inc.*, 588 F.3d 439, 444 (7th Cir. 2009) (noting general rule that a
6 decedent's suicide is a superseding cause); *id.* at 444–45 (“If we were to find that the sale of
7 bullets to Candace was the proximate cause of her suicide without any specific evidence of
8 foreseeability, we would be rejecting the premise that the woman retained free will. . . . A finding
9 of proximate cause on these bare facts would be tantamount to a statement that Candace died in a
10 normal, predictable fashion expected from anyone who violates the FOIC Act [governing
11 firearms sales]. . . . Fortunately, the law calls for the opposite result.”); *Pike v. Grand Trunk Ry.*
12 *Co.*, 39 F. 255, 257 (D.N.H. 1889) (“The intervening cause is not the proximate cause, *unless the*
13 *person acted of his own free will.*” (emphasis added)). This rule is rooted in part in the rationale
14 that irrespective of the defendant's original conduct, it is never normal or predictable for an
15 individual to voluntarily subject himself to a high risk of injury. *See, e.g., Lemos*, 200 P. at 798
16 (“While, on the one hand, it might reasonably be anticipated that plaintiff would make an effort to
17 save the sheep, so, on the other, the defendants' had the right to rely on the existence in plaintiff
18 of the stronger instinct of self-preservation.”)

19 To the extent there are exceptions to the majority rule that free will is a superseding cause,
20 they involve minors or disabled individuals who cannot legally exercise free will. *See Pike*, 39 F.
21 at 257 (“The first cause does not cease to be the proximate cause if such intervening stranger is
22 imbecile, or acts under compulsion, or under a sense of imminent peril; or, in other words, under
23 such circumstances, produced by the first cause, as would give no opportunity for the exercise of
24 free volition on the part of such stranger”); *Lewis*, 474 So.2d at 771 (noting in dicta
25 circumstances in which defendant might have been responsible for 15-year-old victim's death);
26 *Crown v. Raymond*, 159 Ariz. 87, 90 (App. 1988) (in case involving sale of gun, defendant's
27 argument regarding proximate cause “would be persuasive if this were a case involving an adult
28

1 purchaser of a handgun. Because Janet was a minor, however, the focus of the foreseeability
2 determination is different.”).

3 Under these principles, the volitional conduct of the three decedents in this case
4 constitutes a superseding cause of each of the deaths. The facts are that each decedent
5 demonstrated volitional conduct, conscious decision-making, and free will. Each of the three
6 decedents voluntarily signed up for the Spiritual Warrior retreat, signed waivers in order to
7 participate, and chose to join or not join in the activities of the five-day retreat as they saw fit.
8 Each of the three decedents entered the sweat lodge on their own power and based on their own
9 choice, and continued to exercise free will during the course of the ceremony:

- 10 • **Kirby Brown (Count I)**. Several witnesses heard Kirby Brown cheering on other
11 participants with “we can do it, we can do it” as of either “round 8,” or “close to
12 the end” of the ceremony. Trial Transcript, 3/2/11, at 205:3–18 (testimony of
13 Melissa Phillips); Trial Transcript, 6/2/11, at 186:24–25, 189:16–17 (testimony of
14 Dawn Gordon); Draft Trial Transcript, 6/1/11, at 172:6–8 (testimony of Mark
15 Rock). Dawn Gordon also heard Ms. Brown continuing to breathe through the end
16 of the ceremony. *See id.* at 213:17–22; *see supra* Section IV.B.2.a.
- 17 • **Liz Neuman (Count II)**. Liz Neuman stated to Laura Tucker that she was ok and
18 did not need to leave the sweat lodge. Laurie Gennari also heard this exchange.
19 *See supra* Section IV.B.2.b.
- 20 • **James Shore (Count III)**. James Shore told Mark Rock that he did not want to
21 change places, stating “I’m fine right here.” Trial Transcript, 5/27/11, at 57:21–
22 58:2. Mr. Rock believed that Mr. Shore appeared “distressed, but firm in his
23 conviction.” *Id.* According to Debby Mercer, Mr. Shore also got up during the
24 sixth or seventh round, assisted another participant in leaving the lodge, and then
25 *went back inside the lodge*. *See* Trial Transcript, 4/8/11, 172:14–175:13. Dawn
26 Gordon, too, testified that she saw Mr. Shore assist Sydney Spencer in leaving the
27 sweat lodge, and that he then returned to his place next to Ms. Gordon inside the
28 sweat lodge. Draft Trial Transcript, 6/2/11, at 201:10–12. When Mr. Shore

1 returned to his place inside the lodge, Ms. Gordon continued to converse with him
2 during the seventh round, and continued to hear Mr. Shore speaking to Kirby
3 Brown. *See id.* at 204:3–17. *See also supra* Section IV.B.2.c.

4 **b. The State Has Failed to Prove that a Superseding Force Such**
5 **As Toxicity Was Not the Medical Cause of the Three Deaths.**

6 In addition, the trial testimony establishes that there is reasonable doubt to the State's
7 theory of medical cause, because every one of the State's witnesses concedes they cannot rule out
8 toxic poisoning or some secondary mechanism other than heat. These are precisely the types of
9 unforeseeable and abnormal events that constitute a superseding cause. In *Mico Mobile Sales &*
10 *Leasing, Inc. v. Skyline Corp.*, 97 Idaho 408, 409 (1975), for example, a child died of methanol
11 poisoning after drinking contaminated water drawn from the domestic plumbing system of a new
12 mobile home. The retail dealer of the mobile home had used methanol in the plumbing system as
13 an antifreeze agent, which could not be flushed properly because of two construction defects to
14 the building attributable to the manufacturer. *Id.* The Idaho Supreme Court held as a matter of
15 law that, notwithstanding the construction defects, "the placement of a toxic substance in the
16 domestic water system was such a highly extraordinary act so as not to be foreseeable by [the
17 manufacturer], thus, becoming a superseding cause of the injury." *Id.* at 412. The presence of a
18 hidden toxin on Angel Valley's property is similarly not a factor that followed predictably from a
19 chain of events set in motion by Mr. Ray. Mr. Ray could not have foreseen that toxins might
20 have been lurking in the sweat lodge that JRI did not design or construct, on land owned and
21 maintained by Angel Valley.

22 Accordingly, if the State has not proved beyond a reasonable doubt that the decedents died
23 from heat stroke, and not a superseding cause like toxic poisoning, it has not proved that Mr. Ray
24 was the legal cause of the deaths, and criminal liability cannot attach.¹² The State's evidence

25 ¹² In a pleading filed on April 20, 2011, the State cited two cases—*State v. Slover* and *Zelman v. Stauder*,
26 11 Ariz. App. 547, 550 (App. 1970), apparently (although not explicitly) to suggest that even if the
decedents died of toxic poisoning, Mr. Ray was the legal cause of the deaths. The cases do not support
that proposition.

27 *Slover* was a drunk driving case. Courts uniformly hold that injuries resulting from drunk driving
are foreseeable and proximately caused by the defendant driver -- even if the victim was not wearing a
28 seatbelt (*State v. Freeland*, 176 Ariz. 544, 547 (App. 1993)) or the victim's car was defective (*State v.*
Jansing, 186 Ariz. 63, 68 (1996)) or, as in *Slover*, the victim himself was intoxicated. This is because the

1 therefore *must* prove beyond a reasonable doubt that poisoning from toxins at the sweat lodge site
2 was *not* a superseding cause of the three deaths. The record cannot support this conclusion, for
3 three reasons:

4 (1) The Medical Experts Cannot Rule Out Poisoning

5 *First*, the treating physician and medical examiners who treated or examined the three
6 decedents stated that they could not rule out toxic poisoning as a potential cause of death. Dr.
7 Brent Cutshall, the attending and ICU physician who treated Liz Neuman, testified that he and
8 other doctors at Flagstaff Medical Center “puzzled” over the “odd presentation” of Ms. Neuman,
9 as well as critically ill patients Tess Wong, Stephen Ray, and Sydney Spencer. *See* Trial
10 Transcript, 3/29/11, 182:24–3, 198: 3–5; *id.* at 197:7–17 (Dr. Cutshall agreed with Dr. Peterson
11 that “there was a puzzle going on,” that “something didn’t make sense,” and that the possibility
12 that “nagged” at him was “a possibility of acute ingestion” of a toxin). After not mentioning heat
13 stroke in his initial admitting diagnosis, Dr. Cutshall did change his admitting diagnosis to heat
14 stroke, but explained this was because of “medical billing” requirements, which do not permit
15 entry of a “nonbillable code.” *See id.* at 201:13–203:12. Ultimately, Dr. Cutshall stated that he
16 could not rule out organophosphate poisoning. *See id.* at 247:12–17 (“MS. DO: Now, given all
17 these indications, Doctor, as you sit here before this jury, can you tell them with certainty that you
18 can rule out organophosphates? A. I can’t say I can rule it out with certainty. No.”).

19 Dr. Robert Lyon, the medical examiner who was responsible for determining the cause of
20 death of Kirby Brown and James Shore, similarly testified he could not exclude organophosphate
21 poisoning as the cause of death, and that he was only 51% certain as to his conclusion that the

22 obviously dangerous and illegal act of driving while intoxicated always establishes a “foreseeable risk” of
23 death, regardless of the precise mechanism. *Slover*, 220 Ariz. at 244; *see also State v. Huffman*, 137 Ariz.
24 300, 303 (App. 1983) (“No one needs to be told” that drunk driving is inherently dangerous.). Here, in
contrast, the presence of hidden toxins is not a “foreseeable risk” at all.

25 In *Zelman v. Stauder*, a personal injury action, the defendant admitted that he was negligent in
26 running a stop sign thus causing a collision, but claimed that the negligence of the driver of the car in
27 which plaintiffs were passengers was a superseding cause. 11 Ariz. App. at 549. The court rejected that
theory. The court concluded that because the defendant actively continued his negligent conduct, which
28 *on its own would have been a proximate cause of the injury*, until the injury occurred, the second driver
was at most a concurrent cause of the injury. *Id.* at 550. This analysis is dependent on the conclusion that,
even without the intervening act, the injury was foreseeable based on the defendant’s conduct. That is
plainly not the case where hidden toxins are necessary to the deaths.

1 cause of death was heat stroke. *See* Trial Transcript, 3/31/11, at 183:2–5 (stating confidence of
2 “51 to 49”). Because he did not perform tests at the relevant time, he testified, he cannot rule out
3 organophosphate poisoning. *See id.* at 181:2–5 (“MS. DO: And because you didn’t test at the
4 relevant time, you cannot exclude organophosphates as a cause? A. Correct.”); *id.* at 183:19–22
5 (“Q. And so if we had done what we needed to do on October 9, we could be at some point better
6 than 50 percent? A. Correct.”). Moreover, Dr. Lyon testified he did not hold his conclusion that
7 cause of death was heat stroke to any degree of medical certainty. *See id.* at 142:14–18 (“MS.
8 DO: And so, as you sit here, Dr. Lyon, can you tell the jury whether you believe the cause of
9 death in this case is heat stroke beyond a medical -- reasonable medical degree of certainty? A.
10 No.”).

11 Dr. A.L. Mosley, the medical examiner who determined the cause of death of Liz
12 Neuman, stated that he now *affirmatively believes* that toxicity was a cause of the deaths. Trial
13 Transcript, 5/6/11, at 13:25–14:3 (“MS. DO: What you are telling this jury today is that, based
14 upon your reevaluation of the evidence, you do believe that toxicity was in play; correct? A.
15 Correct.”). Dr. Mosley also testified that he now has “doubts” about his original conclusions
16 regarding Ms. Neuman’s cause of death. *Id.* at 7:20–22. And he testified that he “cannot exclude
17 organophosphates as a contributing cause or a cause of death.” *Id.* at 8:12–16 (“Q. Based upon
18 those signs and symptoms, you’ve reached an opinion today, as you sit here, that you cannot
19 exclude organophosphates as a contributing cause or a cause of death; correct? A. That’s
20 correct.”). This evidence must end the inquiry. On the facts of this case, no reasonable juror
21 could be more certain than the medical examiners themselves that the decedents died of heat
22 stroke.

23 Testimony from the State’s hired expert, Dr. Dickson, does not change this conclusion.
24 As an initial matter, Dr. Dickson is not a medical examiner, and is not qualified to opine as an
25 expert on the cause of the deaths. He did not treat or examine the decedents, and he did not
26 consider any materials beyond those reviewed by the qualified medical examiners, Doctors Lyon
27 and Mosley. Indeed, for these reasons, Dr. Dickson testified he would defer to the expertise and
28 opinions of Drs. Lyon, Mosley, and Cutshall. *See* Trial Transcript, 5/10/11, at 177:16–20 (“MS.

1 DO: And so whatever conclusions or opinions [Drs. Lyon or Mosley] have reached regarding the
2 cause of death, you would defer to them since they are the state's medical examiners in this case;
3 yes? A: Yes."]; 182:19-23 ("MS. DO: And so if that doctor in the ICU who you believe would
4 have the most available information - you would defer to his opinion about the patient he treated;
5 correct? A: Yes.").

6 And even on its own terms, Dr. Dickson's opinion is essentially *consistent* with that of the
7 other doctors. Dr. Dickson agreed with the medical examiners that the signs and symptoms of
8 toxic poisoning overlap with the signs and symptoms of heat illnesses. *See* Trial Transcript,
9 5/11/11, at 82:12-88:21 (testimony of Dr. Dickson) (discussing overlapping signs and
10 symptoms); *id.* at 134:8-13 ("There are signs and symptoms that can be consistent to both. I --
11 we agreed with this yesterday. There are signs and symptoms, and we did a whole list of heat
12 illness and organophosphates. There are overlap, absolutely, of the symptoms."). He believed his
13 opinion was consistent with that of the treating physicians and medical doctors. *See id.* at 139:7-
14 12 ("Well, I don't think I'm the outlier. What you're saying is you said that they have miosis and
15 foaming of the mouth. And we already discussed that those too can present in heat illness and in
16 organophosphate. I think we're saying the same thing."). And though his emphasis is distinct
17 from that of the other doctors, Dr. Dickson cannot rule out toxic poisoning. *See id.* at 147:17-20
18 ("I guess I'm not ruling it out conclusively because I'm saying 99 percent of the time.
19 Conclusive is something that's not available in this diagnosis."). In addition, Dr. Dickson
20 believes his opinion is consistent with an opinion that a secondary process other than heat—
21 hypercapnia—contributed to the decedents' deaths. *See id.* at 207:6-23.

22 Were there any doubt from the medical examiners' opinions that the State had failed to
23 prove beyond a reasonable doubt that the decedents died of heat stroke and not a superseding
24 cause, it would be extinguished by the other record evidence. As described below, there is ample
25 evidence that the decedents *did* suffer the effects of poisoning, and *no* clinical evidence that the
26 decedents died of heat stroke.

(2) The evidence supports a finding of toxic poisoning.

- The specific symptoms that participants observed in the decedents—pinpoint pupils and foaming at the mouth—are classic symptoms of poisoning. *See* Trial Transcript, 3/29/11, at 124:21–125:1 (testimony of Dr. Cutshall) (pinpoint pupils are a “red flag” for ingestion of a toxin);¹³ *id.* at 129:14–132:2 (pinpoint pupils and frothy sputum are symptoms for a cholinergic toxidrome); *id.* at 149:5–151:1 (symptoms of organophosphate poisoning include pinpoint pupils and frothy sputum); *id.* at 219:20–220:9 (frothy sputum or foaming is consistent with cholinergic overdose or exposure); Trial Transcript, 3/31/11, at 166:16–166:21 (testimony of Dr. Lyon) (sputum can be a symptom of a toxidrome); *id.* at 169:15–169:22 (pinpoint pupils could be a red flag for toxidrome); Trial Transcript, 5/6/11, at 25:6–18 (testimony of Dr. Mosley) (pinpoint pupils and frothy sputum are consistent with organophosphate toxicity).¹⁴
- The record is replete with testimony from percipient witnesses, including EMS personnel, other sweat lodge participants, and medical experts, that the decedents did, in fact, have these symptoms. *See, e.g.,* Trial Transcript, 3/31/11, at 228:13–25 (testimony of Dr. Robert Lyon) (James Shore’s mouth contained foam); Trial Transcript, 3/30/11, at 32:23–33:3 (testimony of EMT Joel Swedberg) (Liz Neuman had pinpoint pupils); Trial Transcript, 3/3/11, 23:23–24:16, 156:15–156:24 (testimony of Melissa Phillips) (observations of woman foaming at the mouth); Trial Transcript, 3/8/11, at 102:14–102:17, 104:8–104:19, 106:11–106:13 (testimony of Jennifer Haley) (James Shore had foam coming out of his mouth); *id.* at 3/9/11, 43:12–44:16 (testimony of Jennifer Haley) (Shore had significant

¹³ *See also id.* at 43:18–44:19, 79:2–81:7, 121:21–123:2, 180:17–180:22, 184:2–184:6, 190:5–190:14, 199:6–199:23, 216:6–216:14 (same).

¹⁴ Other participants, too, were seen foaming at the mouth. *See* Trial Transcript, 3/17/11, at 41:4–41:11, 117:5–117:10 (testimony of Lou Caci) (Stephen Ray foaming at the mouth); *id.* at 253:2–253:12 (testimony of Jeanne Armstrong) (Sydney Spencer with frothy sputum at the mouth).

1 foaming at the mouth); *id.* at 161:17–161:22, 202:21–202:25 (testimony of Nell
2 Wagoner) (Liz Neuman had foam coming out of her mouth).

- 3 • Furthermore, the evidence is that miosis and frothy sputum are *not* symptoms of
4 heat stroke. *See* Trial Transcript, 3/29/11, 120:13–22 (testimony of Dr. Cutshall)
5 (heat stroke is typically associated with normal or dilated pupils); *id.* at 124:9–16
6 (there is no mistaking between dilated pupils and pinpoint pupils); *id.* at 251:1–11
7 (“I would say there is not a specific pupil response with the heat stroke.”); Trial
8 Transcript, 5/6/11, at 19:8–16 (testimony of Dr. Mosley) (pinpoint pupils and
9 frothy sputum “would be also inconsistent with the early findings of heat stroke, of
10 pure heat stroke”).

11 (3) There is no clinical or physical evidence of heat stroke.

12 There is no physical or clinical evidence that the decedents had heat stroke. *See* Trial
13 Transcript, 3/29/11, at 99:3–99:25 (testimony of Dr. Cutshall) (heat stroke involves a threshold
14 temperature of at least 104 degrees); *id.* at 173:17–175:10, 194:13–194:17 (testimony of Dr.
15 Cutshall) (Liz Neuman’s sodium and BUN levels, typically referred to as a “dehydration profile,”
16 were completely normal); Trial Transcript, 3/31/11, 146:15–147:9 (testimony of Dr. Lyon) (Kirby
17 Brown and James Shore showed no evidence of dehydration and no documented temperature
18 above 104 degrees Fahrenheit); *id.* at 180:23 –183:22 (Ms. Brown and Mr. Shore had no evidence
19 of dehydration or elevated core temperatures); Trial Transcript, 5/6/11, at 105:17–21, 106:19–23
20 (testimony of Dr. Mosley) (there are no recorded temperatures or other hard evidence that the
21 decedents had body temperatures at or above 104 degrees); *id.* at 108:7–15 (no evidence of
22 dehydration in any of the decedents).

23 It bears emphasis that it is the *State’s burden* to prove beyond a reasonable doubt that a
24 superseding cause like a toxin did *not* cause the three deaths, and that Mr. Ray did. To deny the
25 Rule 20 motion, the court must be confident that a reasonable juror could find that the State has
26 carried this burden. In making this assessment, the Court and the jury absolutely cannot penalize
27 Mr. Ray for not *proving* that the decedents died from poisoning. That is never a defendant’s
28 burden. It also would be impossible in this case due to the State’s failure to preserve critical

1 evidence. Indeed, because the State failed to submit the decedents' blood for testing at the
2 relevant time, and because the State sampled less than 1% of the sweat lodge materials and less
3 than one thousandth of a percent of the soil, the jury will be permitted to infer that such evidence
4 would have been exculpatory. That inference alone can be sufficient to prove reasonable doubt.¹⁵

5 **c. Even Apart From The Superseding Causes, The State Has**
6 **Failed To Prove That Mr. Ray Was The Proximate Cause Of**
7 **The Deaths.**

8 Even apart from the superseding causes described above, the State has failed to prove
9 proximate cause. Proximate cause is shown "by demonstrating a natural and continuous sequence
10 of events stemming from the defendant's act or omission, unbroken by any efficient intervening
11 cause, that produces an injury, in whole or in part, and without which the injury would not have
12 occurred." *Barrett v. Harris*, 207 Ariz. 374, 378 (App. 2004); *see id.* at 383 (holding that the trial
13 court correctly ruled as a matter of law that doctor's order to use blow-by oxygen to resuscitate a
14 baby, which the nurse then administered incorrectly, was not a proximate cause of the baby's
15 death). "Proximate cause requires that the difference between the result intended by the
16 defendant and the harm actually suffered by the victim 'is not so extraordinary that it would be
17 unfair to hold the defendant responsible for the result.'" *Marty*, 166 Ariz. at 237 (quoting 1 W.
18 LaFave & A. Scott, *Substantive Criminal Law*, § 3.12 at 390 (1986)); *Far West*, 224 Ariz. at 194
(same).

19 The State's evidence fails these requirements even apart from the superseding causes
20 described above. Put simply, it is never foreseeable that individuals will abandon the human

21 ¹⁵ The State has argued that lay witness observations of non-life-threatening symptoms at the 2008 JRI
22 sweat lodge are relevant to the State's argument that the cause of the deaths in 2009 was heat stroke and
23 not some other cause. The flaws in that theory of admissibility have been briefed extensively. But even
24 assuming *arguendo* that the 2008 evidence was *admissible* on the issue of causation, it does not come
25 close to satisfying the State's burden to *prove beyond a reasonable doubt* that the decedents died of heat
26 stroke rather than a superseding cause. First, the argument that 2008 sweat lodge evidence is proof of heat
27 stroke in 2009 hinges on the counterfactual scenario that the sweat lodge materials in the two years were
28 the same. In fact, they were not: Ted Mercer testified that the rocks were different, the wood was
different, and some of the coverings were different. Moreover, no one testified that the soil was the same,
or that they knew that no chemicals had been applied to the ground or the materials. Second, even the
State's own hired expert testified that while he did *consider* information from the 2008 sweat lodge, the
symptoms described from 2008 "probably wouldn't be a factor" in "determining whether or not toxins
were at play in this case," because the symptoms described could accompany either toxic poisoning or heat
illness. *See* Trial Transcript, 5/10/11, at 148:1–149:16 (testimony of Dr. Dickson).

1 instinct of self-preservation and choose to endure extreme physical discomfort to the point of
2 death. The gulf between the result intended by Mr. Ray and the harm actually suffered is vast.
3 There is no evidence that any of Mr. Ray's actions in the sweat lodge were intended, expected, or
4 even contemplated as a possible cause of the deaths of three of his students and friends. Nor is
5 there any basis for a legal conclusion that three deaths are a "natural" or reasonably expected
6 result of facilitating a sweat lodge, any more than they are a natural result of climbing a mountain
7 or running a marathon. Rather, by any account, the deaths were extraordinary. In a matter of
8 minutes, the decedents went from displaying signs of physical well-being to the verge of death.
9 The evidence uniformly reflects that no one at the scene—neither Mr. Ray nor the participants
10 seated immediately next to Ms. Brown, Mr. Shore, and Ms. Neuman—had any idea that death
11 was likely. As described in Section IV.B, Mr. Ray had no knowledge that anyone's life was in
12 serious danger. Moreover, it is undisputed that Mr. Ray intended only to help participants. To
13 hold Mr. Ray responsible for the tragic deaths would be to punish him unjustly for an accident
14 that neither he nor any other witness to it could have foreseen.¹⁶

15 2. **The State Has Failed To Demonstrate That Conduct By Mr. Ray Was**
16 **the Actual Cause of the Deaths.**

17 Additionally, because of the lack of proof of the medical cause of death, the State has
18 failed even the most basic requirement of identifying that specific conduct by Mr. Ray was the
19 actual cause of the three deaths. To establish actual causation, the State must prove that "[b]ut for
20 *the conduct* the result in question would not have occurred." A.R.S. §13-203.A(1) (emphasis
21 added). Conduct is "an act or omission and its accompanying culpable mental state." *Id.* §13-
22 105.6. The evidence does not support a conclusion beyond a reasonable doubt that any conduct
23 by Mr. Ray caused the deaths of James Shore, Liz Neuman, and Kirby Brown.

24
25 ¹⁶ As noted earlier, where there is no question that a death was the "natural and continuous" result of the
26 defendant's conduct, it is not necessary for the defendant to have foreseen the "precise result or injury" by
27 which the victim died. *Far West*, 224 Ariz. at 193–94 (precise mechanism of death did not need to be
28 foreseeable where employer had actual knowledge of the lethal consequences of toxic gas inhalation and
actual knowledge that persons would enter the underground tank in question, and where the deaths
"directly resulted" from the employer's knowing adoption of unsafe policies). That is not the case here,
because there is no "natural and continuous" connection between hosting a sweat lodge and death.

1 First, if the State has failed to prove that the decedents did not die of poisoning, it would
2 be the toxic substance on Angel Valley's property, and not Mr. Ray's acts, that caused the deaths.
3 *See supra* Section IV.C.1.

4 Second, even assuming the State proved that heat played a role in the deaths, the evidence
5 does not support a conclusion that Mr. Ray's alleged conduct was the actual cause. Recall that
6 omissions cannot be prosecuted in this case due to the absence of an established legal duty. And
7 the State did not prove that any of the acts it has alleged caused the three decedents to die.
8 Instead, the State's evidence supports factual causation only in the general sense that had there
9 been no Spiritual Warrior Retreat, the decedents would not have passed away. That is insufficient
10 under the law. Put simply, no jury could conclude beyond reasonable doubt that, but for some
11 specific action by Mr. Ray, the three decedents would have exited the lodge and avoided death.
12 Instead, the evidence is that participants were specifically permitted to exit the lodge, were
13 instructed on how to do so safely, and that many participants did leave during the ceremony.
14 Moreover, Mr. Ray did not design or build the sweat lodge; he did not select the rocks, determine
15 their size or mass, or control the fire that heated them; and he did not "place" anyone inside the
16 sweat lodge, as the State says. It is undisputed that all participants entered, and stayed or left, in
17 accordance with their own free will. Not surprisingly, no court has ever found criminal liability
18 in such circumstances.

19 3. **The First Amendment Bars the State From Alleging That Mr. Ray**
20 **Caused the Deaths By Means of His Speech**

21 Finally, the State has introduced extensive evidence of Mr. Ray's speech during the five-
22 day Spiritual Warrior retreat, which the State alleges is relevant to prove causation. According to
23 the State, retreat participants were "conditioned" by Mr. Ray's philosophical teachings to behave
24 in a certain way, or they were misled by his pre-sweat lodge orientation remarks, or both. These
25 speech-based allegations are barred by the First Amendment, which "means that government has
26 no power to restrict expression because of its message, its ideas, its subject matter, or its content,"
27 *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002), and which forecloses
28 speech-based prosecutions even under generally applicable criminal laws that may have

1 permissible, non-speech applications, *see, e.g., Cohen v. California*, 403 U.S. 15 (1971).¹⁷ The
2 State bears the burden of showing the constitutional validity of a criminal prosecution based on
3 speech, *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000), and has
4 never attempted to carry that burden in this case.

5 Nor could it. Mr. Ray's lectures regarding "playing full on" or getting the most out of
6 one's life are classic First Amendment expression and do not fall within any of the exceptions to
7 First Amendment protection recognized by the United States Supreme Court.¹⁸ Similarly, Mr.
8 Ray's speech during the pre-sweat lodge orientation is not punishable as a misrepresentation, for
9 short of the strict criteria that define *fraudulent* speech, *cf. Virginia Bd. of Pharmacy v. Virginia*
10 *Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976),¹⁹ the First Amendment does not
11 permit criminal punishment for speech that is merely erroneous or inaccurate. *Cf., e.g., Gertz v.*
12 *Robert Welch, Inc.*, 418 U.S. 323, 349 (1974) (limiting liability for defamatory statements made
13 negligently as opposed to knowingly or with reckless disregard for the truth). Moreover, any
14 such theory by the State would rest on a counterfactual scenario. The pre-sweat lodge briefing,
15 which is in evidence, specifically advises participants how to leave if they need to do so. It
16 cannot be said that this lecture defrauded participants or knowingly endangered them. Nor has
17 the State identified any duty owed by Mr. Ray that would give his words special weight for First
18 Amendment purposes. *See supra* Section IV.A.2. The evidence of the pre-sweat-lodge briefing,

19
20 ¹⁷ The Defense has elsewhere briefed the applicable First Amendment doctrine, and incorporates those
21 arguments here. *See* Defendant's Motion to Exclude Spiritual Warrior Audio Recordings, filed 3/14/11, at
22 4–10.

23 ¹⁸ These carefully-drawn categories include obscenity, *Roth v. United States*, 354 U.S. 476, 483 (1957),
24 defamation, *Beauharnais v. Illinois*, 343 U.S. 250, 254-55 (1952), incitement, *Brandenburg v. Ohio*, 395
25 U.S. 444, 447-49 (1969) (per curiam), and child pornography, *New York v. Ferber*, 458 U.S. 747, 764
26 (1982). And as the U.S. Supreme Court recently reminded, "[o]ffers to engage in illegal transactions are
27 categorically excluded from First Amendment protection" as well. *United States v. Williams*, 553 U.S.
28 285, 297 (2008). Indeed, "[m]any long established criminal proscriptions—such as laws against
conspiracy, incitement, and solicitation," the Court pointed out, "criminalize speech ... that is intended to
induce or commence illegal activities." *Id.* at 298. This explains Arizona cases upholding against First
Amendment challenge criminal convictions for offering narcotics for sale, such as *State v. Padilla*, 169
Ariz. 70 (Ct. App. 1991). It also explains *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949), a
case involving a conspiracy in restraint of trade, on which *Padilla* in part relied. *See Williams*, 553 U.S. at
297 (classifying *Giboney* as a case concerning an "[o]ffe[r] to engage in illegal transactions").

¹⁹

1 like the evidence of the rest of Mr. Ray's speech, cannot be considered as a cause of the deaths or
2 a basis for criminal punishment.

3 **D. FOR THE SAME REASONS, MR. RAY MUST BE ACQUITTED OF**
4 **NEGLIGENT HOMICIDE.**

5 The State has indicated that it intends to request an instruction on the potential lesser
6 included offense of negligent homicide. For the three reasons argued above—lack of a legal duty,
7 lack of a culpable mental state, and of causation—Mr. Ray must be acquitted of negligent
8 homicide as well.

9 1. **The State's failure to prove causation and identify a legal duty**
10 **requires acquittal of the negligent homicide charges.**

11 As the State has acknowledged, the only legal distinction between reckless manslaughter
12 and negligent homicide is the defendant's awareness of the risk. *E.g., State v. Walton*, 133 Ariz.
13 282, 291 (App. 1982) ("Negligent homicide is distinguished from reckless manslaughter in that
14 for the latter offense, the defendant is aware of the risk of death and consciously disregards it,
15 whereas, for the former offense, he is unaware of the risk."). Thus, because there is no legal duty
16 authorizing criminal prosecution for an omission, and because the State failed to prove causation,
17 the negligent homicide charge cannot reach the jury just as the reckless manslaughter charge
18 cannot. The State's failings on legal duty and causation obviate the need for the Court to analyze
19 whether the State has proven the mental state of criminal negligence. As described below,
20 however, the State has failed to carry its burden of proof on that element as well.

21 2. **The State failed to prove the *mens rea* of criminal negligence.**

22 Even as to the mental state for criminally negligent homicide, the State's evidence fails.
23 To prove that Mr. Ray acted with criminal negligence, the State must prove that he "[1] fail[ed] to
24 perceive [2] a substantial and unjustifiable risk" that the deaths would occur, and that the risk of
25 death was "[3] of such nature and degree that the failure to perceive it constitutes a gross
26 deviation from the standard of care that a reasonable person would observe in the situation."
27 A.R.S. §13-105(10)(d). The State has failed each of these three requirements. The analysis for
28 the mental state of criminal negligence, like the analysis for recklessness, hinges on the facts

1 *known to the defendant at the time.* The State fails because it cannot show that, based on the facts
2 known at the time, any reasonable person would have perceived that the three decedents were
3 likely to die. Accordingly, as explained below, the risk was not “substantial and unjustifiable,”
4 and Mr. Ray’s alleged “failure” to perceive it was not a “gross deviation” from reasonable
5 conduct.

6 **a. Failure to perceive**

7 A defendant’s “failure to perceive” the risk at issue is the only prong that distinguishes the
8 crime of negligent homicide from the crime of reckless manslaughter. *See, e.g., Walton, supra,*
9 133 Ariz. at 291. The difference plays out as follows: if the defendant had *actual knowledge* of
10 the high probability that his conduct would cause death, and disregarding that risk was a gross
11 deviation from reasonable conduct, the mens rea of reckless manslaughter may apply. In contrast,
12 if the defendant *did not perceive* the high probability that his conduct would cause death, and
13 failing to perceive that risk was a gross deviation from reasonable conduct, the mens rea of
14 negligent homicide may apply.

15 Critically, for purposes of both crimes, the defendant’s perception of the risk and the
16 existence of a gross deviation are assessed based on the facts *actually known to the defendant at*
17 *the time.* *See, e.g., State v. Sorensen,* 104 Ariz. 503, 508 (1969) (“The facts must be such that the
18 fatal consequence of the negligent act could reasonably have been foreseen.”) (holding that
19 defendant had not acted with criminal negligence in playing with a baby by tossing him in the air
20 and catching him; the defendant had not known that a small dog would cause him to trip and drop
21 the baby). *See also United States v. F.D.L.,* 836 F.2d 1113, 1118 (8th Cir. 1988) (explaining that
22 involuntary manslaughter requires proof that a defendant “acted grossly negligent, . . . knowing
23 that his conduct was a threat to the lives of others *or having knowledge of such circumstances as*
24 *could enable him to foresee the peril to which his act might subject others.*” (emphasis added));
25 Wayne R. LaFave, 2 Subst. Crim. L. § 15.4 (2d ed.) (“[T]he defendant’s conduct, *under the*
26 *circumstances known to him,* must involve a high degree of risk of death or serious bodily injury,
27 in addition to the unreasonable risk required for ordinary negligence.” (emphasis added)).
28

1 Thus, the pivotal question here regarding criminal negligence is whether, based on the
2 facts Mr. Ray actually knew, his failure to perceive that the three decedents were likely to die was
3 a gross deviation from reasonable conduct. The question is *not* whether Mr. Ray could or should
4 have taken actions that would have given him *more* information about the decedents' condition.
5 To the extent that the State will argue that Mr. Ray acted with criminal negligence because he
6 "should have known" that the three decedents were dying—meaning that Mr. Ray should have
7 taken actions to *investigate and discover* that the decedents were ailing, perhaps by checking on
8 participants between rounds—the State's argument is legally incorrect.

9 When directed to the legally relevant question, the State's evidence cannot be construed to
10 support a finding of criminal negligence. The inquiry, as just noted, is whether the defendant
11 should have perceived the risk of death based on *the facts the defendant actually knew*. Here, the
12 facts the State alleges that Mr. Ray knew do not signal a substantial and unjustifiable risk of
13 death. Over 50 reasonable people also did not perceive the risk of death.

14 Consider again the relevant facts relating to each of the three counts:

- 15 • **Kirby Brown (Count I)**. Several witnesses heard Kirby Brown cheering on other
16 participants with "we can do it, we can do it" as of either "round 8," or "close to
17 the end" of the ceremony. Trial Transcript, 3/2/11, at 205:3–18 (testimony of
18 Melissa Phillips); *see also* Trial Transcript, 6/2/11, at 186:24–25, 189:16–17
19 (testimony of Dawn Gordon); Draft Trial Transcript, 6/1/11, at 172:6–8 (testimony
20 of Mark Rock). Although Dawn Gordon, who was *two feet or less away* from Ms.
21 Brown, described Ms. Brown's breathing as sounding strained, she heard Ms.
22 Brown continuing to breathe through the end of the ceremony, and she did *not*
23 believe that Ms. Brown was in serious medical danger.²⁰ In addition, she heard
24 James Shore state, in reference to Ms. Brown, that he "needed help over here," but
25 she did not perceive from that comment that Ms. Brown was in grave danger.
26 Given that a person in direct contact with the decedent shortly before her death had

27
28 ²⁰ This testimony was given on June 3, 2011. A transcript of the day's proceedings is not yet available.

1 no idea that death was likely, no reasonable jury could conclude that Mr. Ray's
2 failure to perceive the grave danger was a heinous deviation from reasonable
3 conduct. Indeed, the jury could not reach such a conclusion *even* if the State had
4 proven that Mr. Ray heard Ms. Brown's breathing or Mr. Shore's comment—but
5 the State did not prove even *those* facts. *See supra* Section IV.B.2.a.

- 6 • **Liz Neuman (Count II)**. Laura Tucker and Laurie Gennari were positioned
7 immediately next to Liz Neuman inside the sweat lodge. Neither one of them had
8 any idea that Ms. Neuman was in grave danger. Both of them would have helped
9 had they known. In particular, Laura Tucker was *physically touching* Ms. Neuman
10 and *explicitly asked* her if she needed to leave the sweat lodge. Neuman's clear,
11 prompt answer was no. No reasonable jury could conclude that Mr. Ray's failure
12 to perceive the risk of death from across the room was a gross deviation from
13 reasonable care when competent adults right next to Ms. Neuman, who were in
14 fact inquiring whether she was ok, did not perceive the risk. *See supra* Section
15 IV.B.2.b.
- 16 • **James Shore (Count III)**. Witnesses who observed or interacted with James
17 Shore in the minutes before his death did not perceive the risk that he would die.
18 Debby Mercer and Dawn Gordon saw Mr. Shore assist another participant in
19 leaving the lodge and then return, on his own, to his place inside the lodge. There
20 is no evidence that Ms. Mercer perceived that Mr. Shore was in grave danger; to
21 the contrary, she testified that if she had believed a person was in grave danger,
22 she would have helped them. Similarly, Dawn Gordon testified that she conversed
23 with Mr. Shore, and heard Mr. Shore speaking to Kirby Brown, during the eighth
24 round of the ceremony. Ms. Gordon did not perceive a risk that Mr. Shore would
25 die. Even Mark Rock, who believed that Mr. Shore was experiencing some
26 distress during the ceremony, testified that Mr. Shore was speaking and exhibiting
27 conviction in his desire to stay inside the sweat lodge. *See supra* Section IV.B.2.c;
28 Section IV.C.a. The State simply adduced *no* evidence that *anyone*, even those

1 located closest to Mr. Shore and interacting with him, perceived the risk of his
2 death. No reasonable jury could conclude that Mr. Ray's failure to perceive that
3 risk was a gross deviation from reasonable conduct.

4 At most, the State alleges that Mr. Ray knew that one or more participants had endured a
5 burn or needed assistance in leaving the sweat lodge. This Court has already *expressly held* that
6 such non-life-threatening symptoms do *not* constitute notice of a substantial and unjustifiable risk
7 of death. Under Advisement Ruling on MIL No.1, 2/3/11, at 3 (holding that knowledge of non-
8 life-threatening symptoms—such as “disorientation or incoherence, unresponsiveness, shaking
9 violently or convulsions, and apparent loss of consciousness”—“would not constitute notice that
10 he allegedly was subjecting these participants to a substantial and unjustifiable risk of death.”).
11 Nor could failing to perceive the likely result of death given these facts constitute a heinous or
12 egregious deviation from reasonable conduct. The fact that Mr. Ray did not perceive that the
13 three deaths were likely therefore cannot be a basis for criminal liability

14 **b. Substantial and Unjustifiable Risk**

15 The State has failed to prove that the risk at issue was substantial and unjustifiable. The
16 analysis for this prong is identical to the analysis of the same prong for the crime of reckless
17 manslaughter. *See supra* Section IV.B.3. The critical fact is that there was no indication that the
18 three decedents were likely to die. To the extent there were any signs that anyone was in distress,
19 the only relevant data points that a jury could find Mr. Ray actually knew were that one
20 participant had received a non-life-threatening burn and that one or more others received
21 assistance in exiting the lodge. As a matter of law, neither of these data points signals a risk of
22 *death* that can be classified as “substantial and unjustifiable.”

23 **c. Gross deviation**

24 For the reasons stated in Section IV.B.4, the State has also failed to prove that Mr. Ray's
25 conduct was a gross deviation—meaning flagrant, heinous, or egregious—from reasonable
26 conduct. None of the reasonable people inside the sweat lodge knew that the three decedents
27 were on the verge of death. Accordingly, none of them rendered aid. Given the facts known at
28

1 the time, Mr. Ray's conduct was not even an unreasonable deviation from the conduct of a
2 reasonable person, let alone the sort of heinous deviation that could support a criminal charge.

3 V. CONCLUSION

4 In sum, three reasons, each independently sufficient, preclude a conviction for the three
5 charged counts of reckless manslaughter: (1) Mr. Ray had no duty to perform the omitted acts that
6 are indispensable to the crime the State has charged, (2) the State failed to prove that Mr. Ray
7 acted with a culpable mental state, and (3) the State failed to prove causation. Each of these
8 failings also requires acquittal of the potential lesser included offense of negligent homicide.
9 Intertwined with these three deficiencies, to deny this motion and permit the State's case to reach
10 the jury, this Court would need to radically alter the legal landscape by making a dozen new rules
11 of law, which taken together, would work a sea-change in criminal law in Arizona, and likely
12 beyond. Such a result would be wholly inconsistent with the constitutional protections that our
13 system affords criminal defendants. This Court should not so rewrite the criminal law.

14 "The court's decision on a defendant's motion shall not be reserved, but shall be made
15 with all possible speed." Ariz. R. Crim. P. 20(a). As explained in the Rule's comment, Rule 20
16 "requires that the decision on such motion be made with all possible speed after the state has
17 rested its case. At this point the defendant must decide whether or not to defend himself
18 affirmatively. He should not be forced to make his decision in ignorance of the sufficiency of the
19 state's case." *Id.* cmt.; *see also State ex rel. Dawson v. Superior Court*, 112 Ariz. 123, 123 (1975)
20 ("We hold that the trial judge abused his discretion in taking the motions for judgment of
21 acquittal under advisement contrary to Rule 20."). This Court must therefore rule on Mr. Ray's
22 motion prior to the commencement of the Defense case. Because the State has failed to adduce
23 substantial evidence within the meaning of Rule 20, the Court must enter judgment of acquittal on
24 all charges.

1 DATED: June 3, 2011

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6 By: 




Attorneys for Defendant James Arthur Ray

14 Copy of the foregoing delivered this 3rd day
15 of June __, 2011, to:

16 Sheila Polk
17 Yavapai County Attorney
18 Prescott, Arizona 86301

19 by 

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,
Plaintiff,
vs.
JAMES ARTHUR RAY,
Defendant.

)
)
)
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) Case No. V1300CR20108-0049
)
)
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)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY SEVEN
MARCH 1, 2011
Camp Verde, Arizona
(Partial transcript -- opening statements
By Ms. Polk.)

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 Kirby, James, and Liz found death, found death in
2 Mr. Ray's sweat lodge.

3 The man who promised Kirby, James, and
4 Liz enlightenment and success if they followed him
5 and endured an intense and searing heat condition
6 in his sweat lodge is James Ray, seated over at
7 defense table.

8 This sweat lodge ceremony, this heat
9 endurance challenge, was the grand finale of a
10 weeklong seminar. Fifty-six people followed James
11 Ray into that tent on October 8th to participate in
12 his heat endurance challenge.

13 By the time Mr. Ray ended this heat
14 challenge, two to two and a half hours later, about
15 20 people were down and several unconscious.

16 (Audio recording played.)

17 MS. POLK: According to the medical examiner,
18 who will testify in this case, Kirby Jones died of
19 heat stroke; James Shore died of heat stroke, and
20 Liz Neuman died ten days later with her family at
21 her side after being taken off of life support.

22 The medical examiner will testify that
23 Liz Neuman died of multisystem organ failure due to
24 hyperthermia, which is the overheating of the body
25 due to prolonged sweat lodge exposure.

1 Kirby Brown and James Shore, along with
2 most of the participants, had paid considerable
3 sums of money to Mr. Ray, the defendant, to enroll
4 in his seminar called "Spiritual Warrior 2009."

5 Liz Neuman had participated in the past
6 in many of Mr. Ray's seminars and was at the event
7 in October as a volunteer staff member.

8 In this case you will hear from many
9 witnesses who also enrolled in Mr. Ray's Spiritual
10 Warrior 2009 seminar. Most participants paid close
11 to \$10,000 to the defendant plus another \$1,600 for
12 room and board at the retreat center.

13 The seminar ran from Saturday evening,
14 October 3rd, to Friday morning, October 9th. It
15 was held at a location called the "Angel Valley
16 Retreat Center," about 25 miles from this
17 courthouse, down along Oak Creek.

18 The defendant, James Ray, promised that
19 his Spiritual Warrior seminar would ensure his
20 participants the five pillars of success:
21 financial, relationships, mental, spiritual, and
22 physical.

23 The theme for the Spiritual Warrior 2009
24 seminar was to act like warriors and act with honor
25 at all times. And Mr. Ray, through his staff,

1 recorded all of his sessions with his participants
2 during this seminar.

3 (Audio recording played.)

4 MS. POLK: Mr. Ray promised his participants
5 that he would facilitate their enlightenment
6 through the activities of the week.

7 (Audio recording played.)

8 MS. POLK: Mr. Ray told the participants that
9 the week would be difficult and challenging and
10 told them that they would have many altered state
11 experiences before the week ended.

12 (Audio recording played.)

13 MS. POLK: From the very first day of the
14 seminar, Mr. Ray told the group that what he called
15 "threshold experiences" would be uncomfortable but
16 were necessary to grow in capacity.

17 (Audio recording played.)

18 MS. POLK: The events of the week were a
19 surprise for most of the group. When they signed
20 up, most participants did not know what to expect.

21 Participants arrived at Angel Valley on
22 Saturday afternoon for registration. The
23 defendant, Mr. Ray, welcomed them around 6:00 p.m.

24 Mr. Ray encouraged everyone to
25 participate in the events of the week 100 percent

1 in order to get the full value of their investment.
2 The defendant called this "playing full-on" and
3 promised the group they would leave different
4 people.

5 (Audio recording played.)

6 MS. POLK: At this trial you will hear from
7 witnesses that throughout the week those who showed
8 a reluctance to participate in certain activities
9 were reminded time and again by Mr. Ray to play
10 full-on.

11 Many witnesses in this trial will testify
12 that by the end of the week when they entered
13 Mr. Ray's sweat lodge for the grand finale event,
14 his heat endurance challenge, they were exhausted,
15 mentally weak, and fully conditioned to follow
16 Mr. Ray's instructions.

17 One of the first events the participants
18 faced shortly after arriving at Angel Valley was to
19 shave their heads -- men and women alike. Mr. Ray
20 told them that the act of shaving their head was
21 symbolic of playing full-on. And many witnesses at
22 this trial will tell you that they shaved their
23 heads, demonstrating to Mr. Ray and to themselves
24 their intention to enter into the activities of the
25 week 100 percent and to play full-on.

1 gathering.

2 Now back to day five of the Spiritual
3 Warrior 2009 seminar. After participants came in
4 from their Vision Quest on Thursday morning and had
5 a light breakfast, the code of silence was lifted.
6 There was no lunch that day. Mr. Ray showed his
7 participants another clip from The Last Samurai and
8 briefed them on the last event, the grand finale,
9 the event that was supposed to convince them that
10 their money was well spent, the ultimate heat
11 endurance challenge, Mr. Ray's sweat lodge
12 ceremony.

13 About 30 minutes before participants
14 entered this sweat lodge, participants learned for
15 the first time about this activity.

16 (Audio recording played.)

17 MS. POLK: In briefing his participants about
18 this heat endurance challenge, Mr. Ray tells them
19 that the point of this exercise is to have an
20 altered experience. He tells them that the heat
21 will be the most intense they've ever experienced.
22 He tells them they will feel like they're going to
23 die, and he challenges them to play full-on.

24 (Audio recording played.)

25 MS. POLK: In this briefing Mr. Ray further

18

1 describes the tent and the challenge and the
2 ceremony, and he tells his participants that their
3 skin will feel like it's going to fall off their
4 body and that they have to face death and overcome
5 it.

6 (Audio recording played.)

7 MS. POLK: Mr. Ray tells his participants they
8 will be in an extreme altered state.

9 (Audio recording played.)

10 MS. POLK: Mr. Ray then tells the participants
11 that if they must leave, they can only leave
12 between rounds and when the gate or the opening is
13 open.

14 (Audio recording played.)

15 MS. POLK: And, finally, shortly before
16 leading his followers into the sweat lodge, Mr. Ray
17 tells the participants to bring a determination of
18 steel.

19 (Audio recording played.)

20 MS. POLK: You will hear testimony in this
21 case from several doctors. The doctors will tell
22 you that heat-related injuries occur on a
23 continuum, from heat exhaustion at the early stages
24 to heat stroke at the later stages.

25 The symptoms of heat-related injuries

1 include muscle cramps, nausea, vomiting, weakness,
2 and altered mental states, the exact symptoms that
3 Mr. Ray had just told his participants to face, to
4 ignore and to conquer.

5 These symptoms of heat-related injuries
6 are points on this continuum of progression from
7 heat exhaustion to heat stroke. In other words,
8 once a person begins to suffer from heat-induced
9 injuries, the injuries will progress along this
10 continuum, leading to death if the person is not
11 removed from the heated environment and treated
12 immediately to cool him down.

13 Witnesses in this case will testify that
14 in this pre-ceremony briefing that you just heard,
15 Mr. Ray led them to believe that these symptoms of
16 heat-induced injuries that they would experience
17 during the heat endurance challenge were normal and
18 that it was safe to ignore their bodies' symptoms
19 in order to play full-on and achieve the altered
20 state.

21 In fact, the doctors will testify that
22 what Mr. Ray was describing for his participants in
23 that pre-ceremony briefing and telling them to
24 ignore are the signs and symptoms of heat-related
25 injuries, which if left untreated can and did lead

20

1 to death.

2 After the briefing, the participants were
3 given 15 minutes to change into bathing suits or
4 shorts and told to meet down by the fire at the
5 sweat lodge.

6 Sometime around 2:30 on Thursday
7 afternoon -- no one is quite sure of the exact
8 time -- 56 people -- participants, Dream Team
9 members, Mr. Ray the defendant, and some of his
10 staff -- lined up and entered this sweat lodge
11 structure.

12 The tent in which Mr. Ray conducted his
13 heat endurance event was built by the Angel Valley
14 Retreat Center and inspected and approved by
15 Mr. Ray. The tent was first constructed in 2008
16 and used by several other groups throughout 2008
17 and 2009 to hold sweat lodge ceremonies without
18 incident. The structure was only about four feet
19 tall at its highest point.

20 As you have heard, participants were told
21 that if they had to leave, they could only leave
22 between rounds when the gate was open, and they had
23 to leave clockwise. For example, if a participant
24 was seated next to Mr. Ray, who was at the opening
25 or the gate, they had to crawl clockwise all the

1 outside will describe how they saw Lou's arm with
2 chunks of flesh falling off his hand and his arm.

3 Witnesses will testify that in spite of
4 these events, Mr. Ray did not stop this ceremony.
5 In fact, for the last round Mr. Ray invited all
6 those who had crawled outside to come back in,
7 including Lou with the burned hand. Lou will
8 testify that as he went back in, James Ray said to
9 him, this last round is for you.

10 You will hear testimony about many more
11 participants who passed out, were dragged out right
12 in front of Mr. Ray; about the chaos; about how
13 some were left outside on tarps unconscious; how
14 several wanted to stick it out and to endure this
15 unbearable heat inside the tent to achieve, as
16 promised by Mr. Ray, an altered state but how they
17 remember nothing until they woke up in ICU at one
18 of the local emergency rooms.

19 And you will hear from witnesses how, in
20 spite of all this chaos and medical distress,
21 Mr. Ray did not stop the ceremony when he had a
22 chance. Mr. Ray did not check up on those still
23 inside his sweat lodge tent and that Mr. Ray
24 continued to bring in more superheated rocks, more
25 water, and created more searing heat and more

26

1 burning steam.

2 I want to talk to you specifically about
3 the testimony and evidence concerning Liz Neuman.
4 As a Dream Team member, Liz was assigned a spot
5 inside the sweat lodge on the west side of the
6 tent. And she was told that her job was to stay
7 inside the tent and to support the participants.

8 The two women who were on either side of
9 Liz will testify in this case. They will tell you
10 how they kept tabs on each other by tapping one
11 another on the arm. Near the end of round seven,
12 they will describe Liz as limp, unresponsive, and
13 laying at a grotesque angle.

14 A woman named Laura will tell you that
15 she called out to Mr. Ray, James, I'm concerned
16 about Liz. When she didn't get an answer, Laura
17 called out again louder, James, I'm concerned about
18 Liz. This time she did get an answer from Mr. Ray.
19 And his response was, Liz has done this before.
20 She knows what she is doing.

21 Laura then grabbed Liz by the shoulder
22 and asked her if she needed help getting out. Liz,
23 who had just heard Mr. Ray pronounce that Liz was
24 fine, responded, no.

25 You will hear testimony that Mr. Ray did

1 not check up on Liz when told of her condition,
2 that Mr. Ray remained in his spot by the opening
3 and, essentially, had just told Liz that she was
4 fine to stay inside the sweat lodge.

5 You will hear medical testimony that heat
6 induces confusion and that those that are at risk
7 for heat-induced injuries, such as heat stroke,
8 often cannot identify when they are at risk.

9 When Mr. Ray finally ended his heat
10 endurance challenge about two and a half hours
11 after it began, he came out first. He was hosed
12 down by his staff. He got himself some water. He
13 sat in a chair.

14 Those participants who were still
15 conscious crawled out. And those that could helped
16 others out. Liz Neuman was found unconscious,
17 still inside, and was dragged out of the tent.

18 The testimony in this case will reveal
19 that James Ray, the defendant, had very few medical
20 supplies on hand for this sweat lodge ceremony and
21 no emergency medical plan in spite of the remote
22 location that he had selected for this event.

23 Only one person on his staff who was at
24 the scene was trained in CPR. And Mr. Ray did not
25 have on hand a portable defibrillator or an AED.

28

1 No ambulance was on standby at the scene. And
2 Mr. Ray had only a small first-aid kit with limited
3 supplies.

4 The 911 call that you heard was made by
5 the fire tender's wife at 5:19 p.m. Because of the
6 remote location of the retreat center, it took the
7 first responders about 20 minutes to arrive.

8 People were down everywhere, and
9 paramedics did their best to triage the scene.
10 They worked on Liz Neuman at the scene and
11 air-vaced her to the Flagstaff Medical Center,
12 trauma one center, at 6:22 p.m.

13 Liz arrive at 6:40 p.m. and doctors
14 immediately took over her care. Liz never regained
15 consciousness. She was taken off life support ten
16 days later, with her family by her side, pronounced
17 dead.

18 The medical examiner performed the
19 autopsy and determined the cause of death to be
20 multisystem organ failure due to hyperthermia,
21 which is the overheating of the body due to
22 prolonged sweat lodge exposure.

23 James Shore and Kirby Brown had positions
24 in the back of the tent.

25 THE COURT: Excuse me, Ms. Polk, I really hate

1 to interrupt. We've gone well into the 90 minutes.
 2 Excuse me for that. And we will resume.
 3 Ladies and gentlemen, please remember the
 4 admonition. No talking about the case. Don't let
 5 anyone talk to you about it. Keep an open mind
 6 about the case. And please be reassembled at 3:30
 7 where Ms. Rybar directs.

8 We are in recess. Thank you.

9 (Recess.)

10 THE COURT: The record will show the presence
 11 of the defendant, Mr. Ray, the attorneys, and the
 12 jury.

13 Ms. Polk, you may continue with your
 14 opening.

15 MS. POLK: Thank you, Your Honor.

16 James Shore and Kirby Brown had positions
 17 in the far back of the tent. You will hear
 18 testimony in this case that the air in the back
 19 part of the tent seemed to be even hotter than
 20 other areas.

21 Also seated in the back area of the tent
 22 was a woman named Sidney Spencer. Sidney will
 23 testify in this case. Sidney will describe the
 24 complete, pitch-black darkness of the tent when the
 25 door was closed. She will describe the heat in the

30

1 back area of the tent as intense and superheated
 2 rocks in the pit as pulsating heat.

3 Sidney will tell you that her mental
 4 status early on was compromised due to the heat.
 5 She remembers little and lost consciousness inside
 6 the sweat lodge.

7 Several witnesses will testify that when
 8 the flap was opened between the sixth and the
 9 seventh round, James Shore dragged Sidney, who was
 10 unconscious, to the opening of the tent to the area
 11 where Mr. Ray sat, and then another participant
 12 dragged Sidney outside.

13 Sidney was placed on a tarp outside still
 14 unconscious. It is unclear whether she received
 15 any attention from anyone until the paramedics
 16 arrived. But Sidney remembers losing consciousness
 17 inside the tent, then waking up in ICU at the
 18 Flagstaff Medical Center, where she remained for
 19 the next six days. Sidney survived.

20 What is clear from testifying witnesses
 21 in this case is that in spite of Sidney and others
 22 being dragged out unconscious right past Mr. Ray,
 23 that Mr. Ray did not stop the sweat lodge ceremony
 24 or check on those inside to make sure that they
 25 were still okay.

1 In her position in the back of the sweat
 2 lodge, Kirby Brown had been struggling for some
 3 time. One of our first witnesses will testify that
 4 Kirby was having trouble breathing for several
 5 rounds.

6 After dragging the unconscious Sidney
 7 Spencer from the back of the tent to the door,
 8 James Shore returned to the position in the back of
 9 the tent to where Kirby was.

10 Several witnesses heard Kirby's troubled,
 11 labored breathing. Several witnesses will testify
 12 that someone, possibly James Shore, called out to
 13 Mr. Ray, Kirby is not breathing. She's passed out.
 14 I can't get her to move, or I need help over here,
 15 or words to that effect.

16 You will learn in this trial that
 17 Mr. Ray, the defendant in this case, responded,
 18 we're closing the door. We'll deal with it when
 19 we're done, or words to that effect.

20 Witnesses will testify that Mr. Ray did
 21 not check up on Kirby when someone called out that
 22 Kirby wasn't breathing. Instead, Mr. Ray said,
 23 we're closing the door. We'll deal with it when
 24 we're done.

25 More rocks were brought in, more water,

32

1 more steam and more heat. Kirby was gurgling.
 2 Witnesses will testify that they heard her
 3 breathing and that it sounded like a death rattle.

4 Those around Kirby were themselves
 5 without any strength. And James Shore, weak and
 6 compromised, and another participant who will
 7 testify desperately tried to save Kirby's life.

8 They pushed and pulled Kirby until she
 9 rolled over onto her side. And then that back part
 10 of the tent became quiet. And those still
 11 breathing focused on their own survival.

12 Mr. Ray conducted eight rounds of this
 13 heat endurance event. He used 55 superheated
 14 rocks. And it lasted approximately two and a half
 15 hours.

16 When it was first over, when it was
 17 finally over, Mr. Ray was the first person out.
 18 Those inside who could, crawled out, collapsed at
 19 the entrance and were dragged to places on the
 20 tarp.

21 Because everyone had to come out
 22 clockwise, some who could crawl were met with
 23 obstacles, specifically other participants who had
 24 passed out and were lying across their paths. A
 25 couple of participants who had the strength dragged

1 out a few who were unconscious.

2 Outside the scene was chaotic. You will
3 hear testimony in this case from the fire tender,
4 his wife, and their daughter, who was 17 years old
5 at the time.

6 The fire tender's wife and his daughter
7 both had positions throughout this heat endurance
8 challenge right outside the door of the tent.
9 Between rounds when the door was open they could
10 see Mr. Ray.

11 Their job was to hand him the hot rocks
12 and the bucket of water. Both of them heard
13 voices, they will testify, inside call out that
14 someone was not breathing. Both of them will
15 testify that they heard Mr. Ray respond, leave her
16 alone until after this round.

17 After Mr. Ray and others had exited the
18 tent, the fire tender's wife looked inside. There
19 through the light she could see three people still
20 lying there. Everybody else had come out. She
21 looked inside, and there through the light she
22 could see three people still lying there in the
23 dirt motionless.

24 The fire tender's wife called out for
25 help, and she and her husband and their 17-year-old

34

1 daughter tore open the back of the tent.

2 Seventeen-year-old Sara will testify.
3 She saw a woman face down in the dirt and by her
4 side a man face up and that they were holding
5 hands. They were purple and blue and mottled,
6 according to Sara.

7 Sara and her parents pulled Kirby Brown
8 and James Shore out of that tent. They also pulled
9 a third person out, a man named Sean Ronan, who
10 survived.

11 911 had not yet been called. And it is
12 the fire tender's wife, a woman named Debby Mercer,
13 who next grabbed her cell phone and ran down the
14 road to an area that gets cell phone service and
15 called 911. You heard her on the phone earlier.

16 Although they were cooled before arriving
17 at the hospital, both Kirby Brown and James Shore
18 never regained consciousness and were pronounced
19 dead at the hospital that same day.

20 Medical examiners determined the cause of
21 death for each due to heat stroke.

22 First responders, paramedics, and several
23 helicopters all came to the scene to take care of
24 the sick and the dying. Detectives from the
25 Yavapai County Sheriff's Office also arrived.

1 You have heard that three people died in
2 Mr. Ray's superheated tent. That night the
3 detective's secured the scene and interviewed those
4 that they could. The next day the detectives took
5 samples of the tent, the materials, the soil, the
6 wood used to heat the rocks, the wood used to build
7 the structure, and collected some of the rocks and
8 then released the scene.

9 The owners of Angel Valley Retreat Center
10 will testify about the memorial service that they
11 had at the scene and the burning of the sweat lodge
12 structure at the site.

13 Today the remaining rocks that were used
14 by Mr. Ray for his heat endurance event remain at
15 the Angel Valley Retreat Center in the shape of a
16 heart to commemorate those that died there.

17 In this case, ladies and gentlemen, you
18 will hear from about 20 participants and two of the
19 Dream Team members for the Spiritual Warrior 2009
20 seminar and that heat endurance challenge. You
21 won't hear from everyone who was inside the sweat
22 lodge, however, as we would be here a long, long
23 time and some of it would be redundant.

24 THE COURT: Do you need some water, sir?

25 JUROR: I'm okay.

36

1 MS. POLK: You will hear more audio in this
2 case and hear more of the context surrounding the
3 audio that I played for you this afternoon.

4 The heat endurance portion of the
5 seminar, what happened inside the sweat lodge, was
6 not recorded. And there is no audio of that.

7 The fire tender, his wife, and daughter
8 will testify, as will the owner of the Angel Valley
9 Retreat Center and an employee. Medical personnel
10 will also testify -- first responders, paramedics,
11 doctors from the two hospitals, and the medical
12 examiners who performed the autopsies. Detectives
13 and scientists from the laboratories that tested
14 some of the materials will testify.

15 And then, finally, relatives of Kirby
16 Brown, James Shore, and Liz Neuman will testify.
17 And then the state will rest its case.

18 The Yavapai County Grand Jury has
19 indicted Mr. Ray on three counts of manslaughter
20 for the deaths of Kirby Brown, James Shore, and
21 Lizbeth Neuman.

22 No one alleges that Mr. Ray intended to
23 kill anyone in his tent. He has been charged with
24 manslaughter.

25 The crime of manslaughter is committed

1 when a person is aware of a substantial and
2 unjustifiable risk that is -- that can cause death
3 and consciously disregards that fact and causes
4 someone's death.

5 The risk must be such that disregarding
6 it was a gross deviation from the standard of
7 conduct that a reasonable person would observe in
8 the situation.

9 The doctors during this trial will tell
10 you that heat stroke is preventable and is a
11 progression of points along a continuum from minor
12 symptoms on one end to death at the other. Time is
13 of the essence in treating a victim of heat stroke,
14 to cool him or her down as rapidly as possible and
15 reverse the effects of the heat on the body before
16 it kills.

17 Ladies and gentlemen, I ask at the
18 conclusion of hearing all the evidence in this case
19 that you find Mr. Ray, the defendant, guilty.

20 I ask that you find him guilty of
21 Count I, recklessly causing the death of Kirby
22 Brown. And I ask that you find Mr. Ray, the
23 defendant, guilty of Count II, for recklessly
24 causing the death of Lizbeth Neuman. And I ask
25 that you find Mr. Ray, the defendant, guilty of

38

1 Count III, recklessly causing the death of James
2 Shore.

3 Thank you, ladies and gentlemen.
4 And thank you, Your Honor.
5 (The proceedings concluded.)
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1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI.) ss. REPORTER'S CERTIFICATE
3

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5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
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9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action

16 In witness whereof, I have affixed my
17 signature this 9th day of March, 2011.
18
19
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22

23 -----
24 MINA G. HUNT, AZ CR No 50619
25 CA CSR No 8335

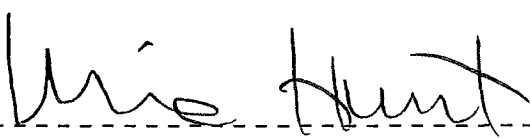
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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY EIGHT

MARCH 2, 2011

Camp Verde, Arizona

(Partial transcript -- hearing on legal matters
and testimony of witness.)

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 sweat lodge on October 8?

2 **A. I believe it was 60.**

3 **Q. Was it crowded inside?**

4 **A. It was.**

5 **Q. How much space did you have inside?**

6 **A. I was touching the people next to me.**

7 **Q. At all times?**

8 **A. Most of the time.**

9 **Q. When you left after the third round, did**

10 **Mr. Ray say anything?**

11 **A. He did not.**

12 **Q. When you came back in, did he say**

13 **anything?**

14 **A. Not to me.**

15 **Q. Did you hear Mr. Ray say things to other**

16 **people who were leaving between rounds?**

17 **A. He was encouraging people that they could**

18 **do it.**

19 **Q. Could do what?**

20 **A. That they could continue, that they**

21 **didn't have to leave.**

22 **Q. And when you say "encourage," what words**

23 **do you recall him using?**

24 **A. Come on, Warrior. You're more than that.**

25 **Live impeccably. You can do it.**

1 **Q. When did Mr. Ray make those statements?**

2 **A. During the event. During the sweat**

3 **lodge.**

4 **Q. Did he make those statements to people**

5 **who were trying to leave?**

6 **A. He did.**

7 **Q. About how many occasions? Do you know?**

8 **A. I couldn't say.**

9 **Q. What was your feeling about your attitude**

10 **toward Mr. Ray with regard to your desire to stay**

11 **inside?**

12 **A. I respected him highly.**

13 **Q. Do you have a feeling about whether your**

14 **actions would disappoint him?**

15 **A. Yes.**

16 **Q. And what was that?**

17 **A. I didn't want to disappoint either him,**

18 **the Dream Team or myself**

19 **Q. Why, Ms. Phillips, did you care about**

20 **whether or not you would disappoint Mr. Ray?**

21 **A. That I don't know except that I had**

22 **admired and believed in what he taught, and I**

23 **wanted to do the best. I didn't want to quit. I**

24 **didn't want to give up.**

25 **Q. When you went back into that tent after**

1 the fourth round, did you get a chance to observe

2 the other participants?

3 **A. I did.**

4 **Q. Tell the jury what you observed.**

5 **A. A lot of people seemed out of it.**

6 **Q. What do you mean by that they "seemed out**

7 **of it"?**

8 **A. A lot of moaning, people lying down, some**

9 **delirium, confusion.**

10 **Q. That was apparent to you?**

11 **A. It was.**

12 **MR. KELLY: Judge, again, there is**

13 **foundational concerns.**

14 **THE COURT: Overruled on that question. It's**

15 **been answered.**

16 **Q. BY MS. POLK: How did you respond to what**

17 **you were observing after the fourth round?**

18 **A. Well, I moved over to the 10:00,**

19 **11:00 o'clock position because there was more room.**

20 **I mentioned several times that I thought people**

21 **were having issues and needed help to leave and**

22 **they didn't wish to leave.**

23 **Q. Why did you mention that?**

24 **A. Because I could hear a snorting breath**

25 **sound from -- it was Kirby I later found out.**

1 **Q. When was it that you said that you**

2 **mentioned that people were having trouble?**

3 **A. I don't know what round it was. But I**

4 **mentioned several times that the person was having**

5 **problems breathing and the person beside them said,**

6 **I'm here. It's fine. She's all right. And I**

7 **trusted that.**

8 **Q. Do you know someone named Lou Caci?**

9 **A. I do.**

10 **Q. When you went back in after the fourth**

11 **round, did you become aware of Lou and where he**

12 **was?**

13 **A. I knew he was -- I knew he was around the**

14 **9:00, 10:00 o'clock mark, but I didn't know exactly**

15 **where he was.**

16 **Q. Did something call your attention to Lou**

17 **in particular?**

18 **A. It did.**

19 **Q. When was that?**

20 **A. He fell into the fire pit.**

21 **Q. Do you know when that was?**

22 **A. It was sometime after the fourth round**

23 **but well before the ending of the ceremony.**

24 **Q. How did you become aware of that?**

25 **A. A blood-curdling scream.**

1 aware of Kirby. Did you ever hear Kirby say
2 anything?
3 **A. I believe it was her who was rocking back**
4 **and forth saying, we can do it, we can do it, we**
5 **can do it, over and over again.**
6 **Q.** When did you become aware of Kirby
7 rocking and saying, we can do it?
8 **A. After I had moved here.**
9 **Q.** Can you give us an estimate of what round
10 that would be.
11 **A. I would guess Round 8. I don't know. I**
12 **don't know how many rounds in total. They blurred**
13 **together.**
14 **Q.** How -- in terms of beginning, middle, and
15 end of Mr. Ray's ceremony, at what point from
16 beginning to middle to end was it that you became
17 aware of Kirby rocking?
18 **A. It was close to the end.**
19 **Q.** Did you hear other people react to Kirby
20 saying that?
21 **A. They yelled at her to stop.**
22 **Q.** Did you yell?
23 **A. No.**
24 **Q.** Who yelled?
25 **A. Other people, the other warriors.**

1 **Q.** How did you know that it was Kirby
2 rocking and saying, we can do it?
3 **A. I looked over and saw that Sidney and**
4 **Kirby were sitting together.**
5 **Q.** Will you draw on this exhibit on the
6 overhead where you believe Sidney -- do you know
7 Sidney's last name?
8 **A. I don't recall it.**
9 **Q.** Will you draw where you believe she was
10 sitting in the sweat lodge.
11 **A. Right here. Right beside her.**
12 **Q.** And just to --
13 **A. It's showing forward, but I want it to be**
14 **back.**
15 **Q.** If you just hit once. Hit once "Undo."
16 It'll undo the last mark you made.
17 **A. They were close to the edge of the circle**
18 **and they were side by side.**
19 **Q.** And what did you observe about Sidney?
20 **A. That she was leaning scrunched down**
21 **against the tent.**
22 **Q.** Sidney was?
23 **A. Yes.**
24 **Q.** You mentioned hearing breathing. When
25 was that?

1 **A. That was after the we can do it, we can**
2 **do it, we can do it.**
3 **Q.** Describe the breathing that you heard.
4 **A. It sounded like a gurgling, snorting**
5 **breath.**
6 **Q.** Do you know who was making that sound?
7 **A. I thought and believed at the time that**
8 **was Kirby.**
9 **Q.** Ask why -- why do you believe it was
10 Kirby?
11 **A. Because she had been deliriously rocking**
12 **back and forth and saying that, and I had looked**
13 **over. It was hard to see clearly, but after the**
14 **event, then I was convinced that I was correct.**
15 **Q.** You just used the term that Kirby was
16 "deliriously rocking." Describe for the jury what
17 it is you observed about Kirby that made you use
18 that word "delirious."
19 **A. I think that most people who are rocking**
20 **back and forth saying a statement over and over are**
21 **not in their right mind. They're not in their**
22 **right frame of mind.**
23 **Q.** What did you do, Ms. Phillips, when you
24 became aware of Kirby rocking and, in your words,
25 "delirious"?

1 **A. I did nothing.**
2 **Q.** Do you know why?
3 **A. I felt that if there was real danger, the**
4 **Dream Team members who were stationed at the north,**
5 **south, east and west would come help us. And I**
6 **trusted the person who said -- beside her that said**
7 **she was okay.**
8 **Q.** You said somebody called out. Do you
9 know who it was that called out?
10 **A. Called out when?**
11 **Q.** Did you hear anybody express verbally out
12 loud concern about Kirby?
13 **A. I said five or six times, there is**
14 **something wrong. She needs to be taken out.**
15 **Q.** How loud did you say that, Ms. Phillips?
16 **A. Quite loudly.**
17 **Q.** Is that from your position over here?
18 **A. Yes.**
19 **Q.** Over what period of time did you say
20 there is something wrong? She needs to be taken
21 out?
22 **A. I believe it was two rounds.**
23 **Q.** And, again, if we're talking beginning,
24 middle or end of Mr. Ray's ceremony, when was it
25 that you were calling out?

1 Q. Why do you believe that?
 2 A. Because that was the area where we saw
 3 light come from, but I don't know for sure who, in
 4 fact, tried to do that.
 5 Q. Let's talk about the light. When was it
 6 that you saw light coming from the back of the
 7 tent?
 8 A. Somebody lifted the tent to crawl out the
 9 back and so light spilled inside of the sweat
 10 lodge.
 11 Q. When did that happen?
 12 A. Close to the end.
 13 Q. Can you point on this chart. Let's see
 14 if we can get you another color. Point on the
 15 chart the area that the light came from. When you
 16 say "toward the end," do you know how close to the
 17 end?
 18 A. If it were 10 rounds, I would say around
 19 Round 8; if there were 12 rounds, round 10.
 20 Q. In relationship to when Kirby was making
 21 some breathing noises and then stopped making
 22 breathing noises, can you tell us when this issue
 23 with the light happened.
 24 A. I can't recall which came first.
 25 Q. You just testified that somebody lifted

1 the flap to climb out?
 2 A. Yes.
 3 Q. How do you know that the person's
 4 intention was to crawl out?
 5 A. Well, we heard Mr. Ray say, hey, and --
 6 you know -- don't do that. This is dishonorable.
 7 This is sacred. And we heard the people outside
 8 saying, no, no. You can't come out this way.
 9 Q. Do you know if anybody crawled out?
 10 A. I do not know.
 11 Q. You've talked a couple of different times
 12 about Dream Team members helping people.
 13 Were you told by somebody that Dream Team
 14 members were there to help you inside the sweat
 15 lodge?
 16 A. They were there to help us the entire
 17 week.
 18 Q. And what about specifically inside that
 19 structure?
 20 A. They were posted in the north, south,
 21 east, and west, and they were there to support us
 22 and help us.
 23 Q. Who told you that?
 24 A. Mr. Ray.
 25 Q. When did he tell you that?

1 A. Before we went in.
 2 Q. Do you know Liz -- did you know Liz
 3 Neuman?
 4 A. I had met her.
 5 Q. And tell the jury. Was she a Dream Team
 6 member?
 7 A. She was.
 8 Q. Now that we have -- let's get another
 9 color. Show the jury where you believe she was
 10 inside this tent.
 11 Did you ever hear Mr. Ray give any
 12 direction to the Dream Team members about their --
 13 his expectations of them inside the structure?
 14 A. I did not hear that.
 15 Q. How were you feeling, Ms. Phillips,
 16 toward the end of Mr. Ray's ceremony?
 17 A. Exhausted and completely overheated.
 18 Q. How did it come to an end?
 19 A. It was announced that the ceremony was
 20 over and we could start exiting.
 21 Q. Who announced that?
 22 A. I believe it was Mr. Ray.
 23 Q. How -- did he ever give you instruction
 24 about how to leave once it was over?
 25 A. We had been given instructions at the

1 beginning to always leave coming through the circle
 2 going the correct way.
 3 Q. You talked earlier about your tobacco
 4 pouches?
 5 A. Yes.
 6 Q. Did you take them inside this tent with
 7 you?
 8 A. We did.
 9 Q. What did you do with them once inside?
 10 A. We hung them on the twigs inside.
 11 Q. Who told you to do that?
 12 A. Mr. Ray.
 13 Q. What were you supposed to do with those
 14 pouches when the ceremony was over?
 15 A. I believe we were supposed to throw them
 16 in the fire. But I don't recall doing anything
 17 with my pouch.
 18 Q. When you learned that this ceremony was
 19 over, what did you do?
 20 A. I exited and then I was hosed off.
 21 Q. Did you have trouble getting out?
 22 A. I crawled out.
 23 Q. Did you -- was it difficult for you?
 24 A. It was not difficult. It wasn't as easy
 25 as going in.


1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
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16 In witness whereof, I have affixed my
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18
19
20
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22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY NINE

MARCH 3, 2011

Camp Verde, Arizona

(Partial transcript.)

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 temperature or in how warm it felt between the
2 three different places you were inside that tent?
3 **A. When I reentered here, there wasn't room**
4 **to lie down. I was closer to the pit. And what**
5 **happened then was that the heat was too**
6 **overwhelming. When I noticed that there was a**
7 **space here where I could lie down, I crawled over**
8 **and laid down.**

9 **Q.** Did you notice a difference in the
10 temperature?

11 **A. It was much more bearable lying down.**

12 **Q.** Was there a difference in the temperature
13 between -- I'm going to use the face of the
14 clock -- between about the 10:00 o'clock position
15 and then the air temperature over at the 2:00 or
16 3:00 o'clock position?

17 **A. Because I was in this area, I was closer**
18 **to the pit. That's why the temperature difference**
19 **I'm assuming.**

20 **Q.** Inside that tent how close were you
21 sitting with the people around you?

22 **A. We were rubbing up against each other,**
23 **touching each other, or we had just a few**
24 **centimeters in between.**

25 **Q.** Did that change over time?

1 **A. I was pretty close to people the whole**
2 **entire time.**

3 **Q.** I'm going to clear the overhead and then
4 have you just draw lines where people were seated
5 so that the jury can see the seating arrangement
6 inside the tent.

7 **A. The seating arrangement of everyone?**

8 **Q.** Roughly.

9 **A. Because when we entered and began, there**
10 **was an outside ring and then there was an inside**
11 **ring. And then people started laying down.**

12 **Q.** When you were inside that tent,
13 Ms. Phillips, could you see the rocks that were in
14 the pit?

15 **A. I could not. Not unless I was sitting**
16 **up.**

17 **Q.** You testified yesterday about how you
18 called out with concern about Kirby --

19 **A. Yes.**

20 **Q.** -- and how a voice answered. Will you
21 show the jury where you were when that occurred.

22 **A. I was lying down around this area with my**
23 **head to the flap.**

24 **Q.** And this area, again, would be the --

25 **A. I would say the 2:00 o'clock area.**

1 **Q.** Were you on your stomach or your back?

2 **A. I was on my stomach.**

3 **Q.** Where was your head in relationship to
4 the edge of the tent?

5 **A. It was right next to the edge.**

6 **Q.** And where were your feet?

7 **A. Toward the pit.**

8 **Q.** Do you know, Ms. Phillips, where Kirby
9 was?

10 **A. I believe that she was somewhere here.**

11 **Q.** Which would be the 12:00 o'clock
12 position?

13 **A. Yes.**

14 **Q.** Do you know where James Shore was?

15 **A. He was close to them. I believe he was**
16 **sitting around here.**

17 **Q.** Where was Mr. Ray?

18 **A. He was next to the tent flap. His**
19 **assistant was beside him.**

20 **Q.** And that last mark would be in the
21 6:00 o'clock position?

22 **A. Yes. Just -- not right at the entrance,**
23 **just beside the entrance.**

24 **Q.** Were there people in between you and
25 where you believed Kirby Brown was?

1 **A. There was one or two other people.**

2 **Q.** Do you know who they were?

3 **A. No.**

4 **Q.** Do you know if they were male or female?

5 **A. I do not recall.**

6 **Q.** And were there people to -- if you were
7 lying on your stomach, were there people to the
8 right of you?

9 **A. Yes, there were.**

10 **Q.** Do you know who they were?

11 **A. I believe the one was Josh, and Theresa**
12 **and her husband.**

13 **Q.** Do you know, Ms. Phillips, is Josh --
14 what's Josh's last name? Do you know?

15 **A. I can't recall.**

16 **Q.** Do you know who he was?

17 **A. He was one of the Dream Team members who**
18 **worked for Mr. Ray.**

19 **Q.** Do you know, Ms. Phillips, if Josh stayed
20 inside the tent for the entire ceremony conducted
21 by Mr. Ray?

22 **A. To the best of my recollection, yes, he**
23 **did.**

24 **Q.** Do you know who was on the other side of
25 where you believe Kirby Brown and James Shore were?

1 A. **Who? Like --**
 2 Q. And so I'm going to make a mark with a
 3 different color on our overhead. I guess it was
 4 the same color. Do you see where I just drew a
 5 mark?
 6 A. **Yes.**
 7 Q. Do you know who was in that area?
 8 A. **I believe Sean and Lou Caci were in that**
 9 **area.**
 10 Q. Do you know Sean's last name?
 11 A. **No, I do not.**
 12 Q. When you called out with your concern
 13 about Kirby Brown -- you testified about that
 14 yesterday -- and then you testified that a voice
 15 responded what?
 16 A. **She's fine.**
 17 Q. Was that voice a male or female?
 18 A. **It was a male voice.**
 19 Q. Will you indicate on the overhead where
 20 you heard that voice come from.
 21 A. **I heard it come from this general area.**
 22 **And I don't know from whom it came.**
 23 Q. And in the position that you were lying
 24 over here, where was your face?
 25 A. **My cheek was to the ground and my face**

1 **was to the tent flap.**
 2 Q. Which cheek? Do you recall?
 3 A. **I believe it was my right cheek.**
 4 Q. With your face facing which way?
 5 A. **Towards the tent flap. I had angled my**
 6 **head.**
 7 Q. Will you indicate on the overhead which
 8 way you could see from how your face was laying on
 9 the ground.
 10 A. **I would raise my head from time to time.**
 11 **And that's how I could see over in this direction.**
 12 Q. Okay. And when you called out, which way
 13 were you looking?
 14 A. **I was looking in this direction.**
 15 Q. And was your head on the ground?
 16 A. **No. It was not when I called out.**
 17 Q. It was lifted up?
 18 A. **Yes, it was.**
 19 Q. Did you recognize the voice?
 20 A. **I did not.**
 21 Q. Do you know at that point in time how
 22 many men were still inside the tent?
 23 A. **There was a lot of men.**
 24 Q. Do you recognize the voice of James Ray?
 25 A. **I do.**

1 Q. And did you make any connection between
 2 the voice you heard and the voice of Mr. Ray?
 3 A. **I did not.**
 4 Q. Would you recognize the voice of James
 5 Shore?
 6 A. **I'm not certain.**
 7 Q. Did you hear any other voices call out
 8 around the time you were calling out with your
 9 concern?
 10 A. **Theresa had called out.**
 11 Q. When did Theresa call out?
 12 A. **She had called out around the time I had**
 13 **called out and instructed them to put her on her**
 14 **side so she could breathe easier.**
 15 Q. What did Theresa say when she called out?
 16 A. **Put her on her side so she can breathe**
 17 **easier.**
 18 Q. Where was Theresa? Will you indicate on
 19 the overhead.
 20 A. **She was around here.**
 21 Q. On the other side of you then --
 22 A. **Yes.**
 23 Q. -- to your right?
 24 Did you hear any other voices call out?
 25 A. **There was a lot of moaning and a lot of**

1 **calling out and a lot of encouragement, people**
 2 **saying, come on warrior.**
 3 Q. And I'm talking specifically about around
 4 the time that you called out with your concern.
 5 A. **Just the response that, she's fine, is**
 6 **what I heard.**
 7 Q. Do you know, Ms. Phillips, if Mr. Ray was
 8 still in the tent when you called out with your
 9 concern?
 10 A. **Yes.**
 11 Q. Do you know, Ms. Phillips, how long you
 12 were inside the tent on October 8th for that
 13 ceremony?
 14 A. **I have no idea.**
 15 Q. Why is that?
 16 A. **Time ceased. It seemed to take forever,**
 17 **and yet at times things went quickly. I don't**
 18 **think any of us, especially myself -- I didn't have**
 19 **a good grasp of how long anything was.**
 20 Q. Was there a change in your condition
 21 inside that tent?
 22 A. **I believe so.**
 23 Q. What sort of change?
 24 A. **When I exited I couldn't walk**
 25 **immediately, and I was shaking and I was overheated**

1 **their own steam.**

2 **Q.** For the people who were dragged out, did
3 you see what happened to them next?

4 **A. No, I did not.**

5 **Q.** Did you have an altered experience while
6 you were inside the tent?

7 **A. I believe that my perception was altered.**

8 **Q.** In what way?

9 **A. With such heat, I can only imagine that I**
10 **wouldn't be thinking like I would normally think on**
11 **a day-to-day basis.**

12 **Q.** Once you -- did you get up from the tarp
13 at some point?

14 **A. I did.**

15 **Q.** And what did you do?

16 **A. I helped Theresa.**

17 **Q.** Do what?

18 **A. Theresa had collapsed and couldn't feel**
19 **her legs, and her husband was really concerned. So**
20 **I asked the Angels to help me. And I did the**
21 **breath work affirmations that I was taught in**
22 **transformational breath. And I put my hands on her**
23 **and kept pouring my energy into her until she felt**
24 **better and she was able to get up and walk away.**

25 **Q.** Where was Theresa when you helped her?

1 **A. There was another tarp over this**
2 **direction near the fire, where the fire heated the**
3 **rocks.**

4 **Q.** Now, I'm going to put up on the overhead
5 Exhibit 145.

6 You just tried to illustrate for us or
7 show us where Theresa was. Does Exhibit 145 show
8 it?

9 **A. It does.**

10 **Q.** Can you point on there for us or draw on
11 there.

12 Is that the same -- well, which one is
13 the tarp that you were placed -- that you got on
14 when you first came out?

15 **A. This is the tarp that I was on.**

16 **Q.** How did you become aware that Theresa
17 needed help?

18 **A. Her husband came and found me.**

19 **Q.** Have I asked you if you know Theresa's
20 last name?

21 **A. I know it and I can't recall it. We've**
22 **stayed in touch via email.**

23 **Q.** How long were you with Theresa helping
24 her?

25 **A. I can only guess 15 minutes to a half**

1 **hour.**

2 **Q.** Were you aware of anything else going on
3 around you while you were helping Theresa?

4 **A. No, I was not.**

5 **Q.** What did you do after you finished
6 helping Theresa?

7 **A. I was directed to go to my room and take**
8 **a shower, and so I did.**

9 **Q.** Who directed you to go take a shower?

10 **A. We were being told by the Dream Team**
11 **members and the Angel Valley staff. Anyone who**
12 **could get up and go was to take a hot shower and**
13 **change.**

14 **Q.** Did you have a conversation with someone
15 named Aaron at some point?

16 **A. I did. And it was right after while I**
17 **was on the tarp being hosed off before I realized**
18 **the seriousness. And as soon as I realized, I**
19 **asked him if I should call 9-1-1. And he said, no.**
20 **It's been called. And I left it at that.**

21 **Q.** What did you become aware of that made
22 you ask Aaron if you should call 9-1-1?

23 **A. There was a woman foaming at the mouth**
24 **and shaking, and she was unconscious. And then I**
25 **looked across and there was another lady. And she**

1 **didn't seem to be responding. And it scared me.**

2 **Q.** Let's talk about the woman who was
3 foaming first. Which tarp were you on when you
4 became aware of a woman foaming?

5 **A. I was on the first tarp.**

6 **Q.** Where was the woman that you became aware
7 of?

8 **A. She was over here somewhere.**

9 **Q.** How was it that your attention was drawn
10 to her?

11 **A. There was commotion.**

12 **Q.** How -- did you see her foaming at the
13 mouth?

14 **A. I did.**

15 **Q.** Did you go over to her?

16 **A. I did not.**

17 **Q.** What did you do?

18 **A. I asked Aaron if he needed me to call**
19 **9-1-1.**

20 **Q.** Did you become aware of somebody else
21 also?

22 **A. I started looking around and I noticed**
23 **more people were in distress. Yes.**

24 **Q.** Tell the jury more specifically what you
25 saw when you started looking around.

1 A. Yes.

2 Q. And I think -- and I don't want to
3 mischaracterize anything. But you're feeling a
4 little weak in the legs and you don't really want
5 to stand up, so you're crawling out?

6 A. **You couldn't stand up inside, and I
7 decided to be safe and crawl.**

8 Q. Okay. And then -- but once you're out of
9 the tent, is my question, did you crawl over to
10 that tarp or did you get up and walk over there?

11 A. **I do not recall.**

12 Q. You were feeling somewhat disoriented,
13 light-headed?

14 A. **I was hot, nauseous, and headachy.**

15 Q. Hot? Nauseous? And someone talked.
16 Headachy?

17 A. **Headachy.**

18 Q. As you then sit or lie down on the
19 tarp --

20 A. **I felt weak.**

21 Q. -- you were hosed off with water?

22 A. **Yes.**

23 Q. And you said that you started taking care
24 of your friend; correct?

25 A. **Yes.**

1 Q. And her name was -- tell me. I forgot.

2 A. **Theresa.**

3 Q. And you were -- I wrote this down --
4 using a technique of transferred breath?

5 A. **I studied transformational breath
6 therapy.**

7 Q. Okay. What is that?

8 A. **It's very similar to the holotropic
9 breath.**

10 Q. And were you encouraged --

11 A. **You breathe people --**

12 Q. Pardon me?

13 A. **You breathe people. You instruct them
14 how to breathe, and you say affirmations. And you
15 put your hands on their body.**

16 Q. So you're instructing or teaching Theresa
17 how to do this after she got --

18 A. **I was helping her. Yes. After.**

19 Q. Do you know whether she already knew this
20 technique?

21 A. **No, she did not.**

22 Q. So then you're actually teaching her how
23 to do it; correct?

24 A. **I wasn't teaching. I was just helping
25 her.**

1 Q. Okay. You were helping her do it. And
2 so what do you do?

3 A. **I put my hands on her. I called upon the
4 angels and the "I AM" presence, and I said positive
5 affirmations. I did a leg press and just held her
6 feet, and I did everything I had been taught.**

7 Q. I guess I misunderstood. I thought you
8 said with transformational breath there was some
9 breathing exercise with it.

10 A. **You can do the breathing. I did the
11 affirmations and I used my energy to give to her.**

12 Q. And affirmations. Is that like you're
13 going to be okay?

14 A. **Yes.**

15 Q. And how long, then, did you treat your
16 friend Theresa?

17 A. **Guessing, 10, 15 minutes.**

18 Q. And after this she was okay?

19 A. **Yes.**

20 Q. Was she hosed down?

21 A. **Yes.**

22 Q. So at that point in time, I believe you
23 told us you did notice Mr. Ray come out and sit
24 down in a chair?

25 A. **Yes.**

1 Q. And he was in the chair and he made some
2 comment about there's a nurse? I have a nurse? Or
3 go find the nurse? Something along those lines?

4 A. **Somebody asked him what to do. And he
5 said, I don't know. I'm not a nurse. Where is the
6 nurse? He pointed them to the nurse.**

7 Q. During that seminar in Sedona, did you
8 meet a lady by the name of Dr. Jean Armstrong?

9 A. **Not personally. Not that I recall.**

10 Q. Would you recognize her if you saw her?

11 A. **I might.**

12 Q. Okay. Did you see her after the sweat
13 lodge when you were treating your friend Theresa?

14 A. **I did not.**

15 Q. And you mentioned that someone was lying
16 there foaming at the mouth?

17 A. **Yes.**

18 Q. And you don't know who that person is?

19 A. **I do not know.**

20 Q. And, again, I understand you're not a
21 doctor. So explain to us what you mean by
22 "foaming."

23 A. **There was white foam literally around her
24 mouth.**

25 Q. Was someone helping her?

1 Shore was in that position on the exhibit that you
 2 illustrated for us?
 3 **A. Yes, I was.**
 4 **Q.** Tell the jury when is the last time you
 5 were consciously aware of James Shore.
 6 **A. When he made a sharing and a speech in**
 7 **the Crystal Hall and then to see him in the sweat**
 8 **lodge at the beginning.**
 9 **Q.** Okay. You were questioned by Mr. Kelly
 10 about the voice that called out, she's fine, when
 11 you expressed concern about Kirby.
 12 **A. Yes.**
 13 **Q.** And a couple different times Mr. Kelly
 14 said to you it came from a man right next to Kirby.
 15 Is that true?
 16 **A. I thought it came from somebody next to**
 17 **her.**
 18 **Q.** Right next to her or in the area?
 19 **A. I am not sure.**
 20 **Q.** You made the statement to Mr. Kelly that
 21 Mark Rock was going in and out of lucidity, and
 22 then you said we all had been going in and out of
 23 lucidity.
 24 **A. Yes.**
 25 **Q.** Who is "we"?

1 **A. We, the participants.**
 2 **Q.** And you also?
 3 **A. I believe I must have.**
 4 **Q.** You were asked several questions from
 5 Mr. Kelly about making choices. If you are out of
 6 lucidity, not in lucidity, can you make a choice?
 7 MR. KELLY: Objection, Your Honor.
 8 THE COURT: Overruled.
 9 You may answer it if you can.
 10 THE WITNESS: I don't believe you can make an
 11 informed decision at the time.
 12 **Q.** BY MS. POLK: And then Mr. Kelly asked
 13 you a question about whether you recall the woman
 14 who said she had high blood pressure.
 15 **A. Yes.**
 16 **Q.** And the woman asked Mr. Ray whether --
 17 what did she ask Mr. Ray about her high blood
 18 pressure?
 19 **A. If I remember correctly, she said, I have**
 20 **high blood pressure. Will this raise my blood**
 21 **pressure? Need I be concerned?**
 22 **Q.** And Mr. Ray's response was?
 23 **A. You have to know your own body. I am not**
 24 **a doctor.**
 25 **Q.** Do you know if that woman was allowed

1 inside the -- Mr. Ray's sweat lodge structure?
 2 **A. She did go in.**
 3 **Q.** And do you know what happened to her
 4 inside?
 5 **A. I don't know what happened to her inside.**
 6 **I saw her after laying down.**
 7 **Q.** And will you tell the jury what you
 8 observed about her after when you saw her.
 9 **A. She was laying down and people came and**
 10 **attended to her.**
 11 **Q.** Did you know the woman's name?
 12 **A. I did not.**
 13 **Q.** Will you describe the physical
 14 characteristics of this woman for the jury.
 15 **A. She was a larger woman.**
 16 **Q.** When you say "larger," how large do you
 17 mean?
 18 **A. Heavier. I don't know the weight.**
 19 **Q.** If you were to describe a woman of
 20 average weight, was she close to average or would
 21 she be --
 22 **A. Larger than average.**
 23 **Q.** And then when Mr. Kelly asked you the
 24 line of questioning about the woman with high blood
 25 pressure and Mr. Ray's response, Mr. Kelly said to

1 you that Mr. Ray's response that he was not a
 2 doctor, you had to know yourself -- Mr. Kelly said
 3 to you that was consistent with the theme of the
 4 seminar of taking control, assuming risk,
 5 controlling risk, and taking responsibility.
 6 Do you remember that question?
 7 **A. Yes, I do.**
 8 **Q.** When you were inside Mr. Ray's sweat
 9 lodge tent, did you think if you passed out you
 10 would be left there to die?
 11 **A. No.**
 12 **Q.** Did you think only you would be
 13 responsible for yourself if something happened to
 14 you inside the sweat lodge structure?
 15 **A. No.**
 16 **Q.** And then finally you were asked some
 17 questions from Mr. Kelly, again about choices. And
 18 you told -- you mentioned to Mr. Kelly that people
 19 inside appeared to be unconscious. Do you recall
 20 that?
 21 **A. Yes.**
 22 **Q.** Were the people that you observed inside
 23 Mr. Ray's sweat lodge structure that appeared to be
 24 unconscious to you -- were they able to make a
 25 choice about getting out?

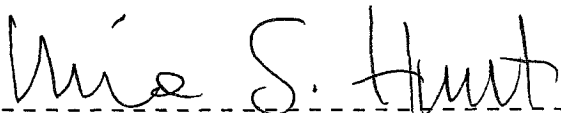
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 30th day of March, 2011.

18
19
20
21
22 

23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY TEN

MARCH 4, 2011

Camp Verde, Arizona

(Partial transcript -- testimony of witnesses)

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 **A. Liz.**
 2 **Q.** When did you work out that system with
 3 her?
 4 **A. It must have been prior when she was --**
 5 **you know -- coaching us.**
 6 **Q.** At any time prior to your entering this
 7 structure for Mr. Ray's ceremony, had Mr. Ray ever
 8 told you to work out a system?
 9 **A. I don't remember that he did.**
 10 **Q.** Okay. Tell the jury the system that Liz
 11 suggested for you.
 12 **A. She was -- she suggested that we tap each**
 13 **other as a way to -- you know -- we couldn't really**
 14 **speak, not for any other reason than -- you know --**
 15 **it wasn't the time or place to be chatting. So**
 16 **that we would -- you know -- just kind of touch**
 17 **each other on the arm or just wherever we were in**
 18 **close contact.**
 19 **Q.** And you're using the word "we." Was it
 20 more than just you and Liz Neuman?
 21 **A. Well, I had Liz on my right, and I had**
 22 **Daniell on my left, so we would tap.**
 23 **Q.** How often would you tap each other?
 24 **A. It was pretty regular, you know.**
 25 **Q.** In terms of minutes, can you give us an

1 idea.
 2 **A. I'd say every few minutes, every five**
 3 **minutes. It's hard to quantify it. It was at**
 4 **regular intervals.**
 5 **Q.** Were you aware of whether either woman on
 6 either side of you was tapping on you?
 7 **A. Yes, I was.**
 8 **Q.** Was Liz tapping on you?
 9 **A. She was.**
 10 **Q.** At some point did that change? Actually,
 11 let me back up.
 12 You talked about knowing that if you
 13 didn't get things under control, you were going to
 14 leave. Did that change?
 15 **A. Yes. Absolutely it did.**
 16 **Q.** Tell the jury what happened.
 17 **A. Well, the first three rounds were very**
 18 **strenuous for me because of how I was -- you**
 19 **know -- trying to breathe. And at some point there**
 20 **I knew -- I apologize. I'm repeating myself. I**
 21 **knew that I would have to go if that didn't change.**
 22 **And suddenly instead of trying to force myself to**
 23 **breathe slowly and deeply, I started to breathe**
 24 **much more shallowly, and everything in my body**
 25 **calmed down. All of the discomfort went away. My**

1 **heart rate settled. And everything shifted for me.**
 2 **Q.** And once things shifted for you and you
 3 calmed down, were you aware of the people around
 4 you?
 5 **A. I was aware of the people immediately**
 6 **surrounding me.**
 7 **Q.** Were you aware of Liz Neuman?
 8 **A. I was.**
 9 **Q.** At some point did Liz do something that
 10 drew your attention?
 11 **A. Yes, she did.**
 12 **Q.** Tell the jury what.
 13 **A. This would have been -- you know --**
 14 **somewhere around the fourth or the fifth round.**
 15 **And I was still -- I remained lying down on my back**
 16 **the entire time. So she had been sitting at the**
 17 **back, so close to my head. And she crawled**
 18 **forward, and she went into child's pose, so she was**
 19 **kneeling and put her head down towards the center.**
 20 **Q.** Will you show us on this exhibit we have
 21 on the overhead the change -- where Liz went from
 22 and where she ended up.
 23 **A. Now, this isn't to scale, is it, or**
 24 **anything?**
 25 **Q.** No.

1 **A. Okay. We were here where the mouse**
 2 **pointer is. I was lying down. My head was back.**
 3 **Can I clear it?**
 4 **Q.** Yes.
 5 **A. Okay. So if we were here and here --**
 6 **Q.** Which one of those is you?
 7 **A. It's not very precise.**
 8 **Q.** That's okay.
 9 **A. So this would be Liz. This would be me,**
 10 **the one further to the top here. Forget the little**
 11 **one. And so my head was to the outside of the**
 12 **circle touching the tent. Liz moved forward**
 13 **probably just over half of my body length, and she**
 14 **went forward, like I described, with her head**
 15 **towards the stones.**
 16 **Q.** Will you just draw on there, then,
 17 connecting Liz from where you thought she started
 18 to where she ended up?
 19 Did you react to that?
 20 **A. Well, I certainly noticed.**
 21 **Q.** Why?
 22 **A. Well, for a couple of reasons. The first**
 23 **thing is here I was. And I had to be lying down on**
 24 **my back. So it was very different than where I**
 25 **was. And secondly, it was the opposite of what she**

1 described to me.
 2 Q. Did that concern you?
 3 A. It did.
 4 Q. And the opposite of what had been
 5 described to you -- why did that concern you?
 6 A. Well, I guess I was thinking of myself in
 7 that position. And I figured it would have been
 8 extremely uncomfortable.
 9 Q. Were you concerned about the temperature?
 10 A. Yes.
 11 Q. Had you noticed, Ms. Tucker, a difference
 12 in the temperature from being close to the pit as
 13 opposed to being near the side of the tent?
 14 A. Well, the heat was radiating from the
 15 middle, and so it was hotter on my feet and my
 16 shins, which were facing the stones, than it was on
 17 my head, which was away.
 18 Q. What did you do when Liz Neuman shifted
 19 her position to move closer to the pit?
 20 A. Initially I just observed it. And then
 21 as things progressed, I could still -- from my
 22 position I could still reach her. So I reached
 23 forward -- and we had been tapping. So I reached
 24 forward, and I was tapping her.
 25 Q. And what happened? Was there any

1 reaction?
 2 A. Yeah. She tapped back. And then at some
 3 point I reached forward again and I grabbed her hip
 4 to kind of pull her. And I don't remember if I
 5 said, Liz, come back here, but just trying to
 6 say -- you know -- come on. Back away.
 7 Q. And was there a response?
 8 A. She brushed my hand away.
 9 Q. You said that was around the fourth or
 10 the fifth round?
 11 A. Progressing from there.
 12 Q. Do you recall approximately when it was
 13 that you tried to pull her back and she brushed
 14 your hand away?
 15 A. (No audible response.)
 16 Q. Did that concern you?
 17 A. Well, sure it did.
 18 Q. Did you notice anything further about
 19 Liz?
 20 A. Well, she didn't stay in that position
 21 indefinitely. She changed her position again.
 22 Q. When was it that Liz changed her position
 23 again?
 24 A. This is where the time line is a little
 25 sketchy for me.

1 Q. Okay. Let me just digress a little bit.
 2 A. Okay.
 3 Q. Do you know how many rounds Mr. Ray
 4 conducted that day?
 5 A. I believe it was eight rounds.
 6 Q. Do you have a sense, then, in terms of
 7 your perception of time, did your ability to
 8 perceive time change as the ceremony progressed?
 9 A. I think that's a good way of describing
 10 it.
 11 Q. Put it in your own words.
 12 A. Well, first off, when I was there I had
 13 no idea that this would ever be something that
 14 would be scrutinized to this degree. I was not
 15 paying attention to the most minute detail of how
 16 time was passing. So it's hard to go back and
 17 reconstruct it other than to do a time line -- you
 18 know -- to put things in order. And that's why
 19 sometimes I may not sound completely confident
 20 about how long something was or something took.
 21 But I know the order that they were in.
 22 Q. Did you know prior to entering that tent
 23 how long you would be in there for?
 24 A. I anticipated -- you know -- an hour and
 25 a half to two hours, I believe.

1 Q. Where did you get that idea from?
 2 A. I think that was from the explanation
 3 Mr. Ray gave prior.
 4 Q. So we were talking about Liz and that she
 5 shifted her position again. Do you have a sense
 6 for how many minutes or hours into this event it
 7 was when she shifted again?
 8 A. I would have to say around the sixth
 9 round.
 10 Q. How did she shift? How did she change
 11 her position?
 12 A. She got up and she moved in front of me,
 13 and she sat back and she leaned back on my legs.
 14 Q. If you will just show us on your diagram.
 15 Illustrate what you just said.
 16 A. Well --
 17 Q. And I think if we tap, we can give you a
 18 different color.
 19 A. Okay. So if that dot here is me, she had
 20 been shifted forward about half my body length with
 21 her head facing to the pit. She got up and she
 22 moved and she sat.
 23 Q. Okay. Then what did she do? Did she
 24 touch you?
 25 A. Well, she was leaning back on me.

1 Q. Okay. Please.
 2 A. I think I've got -- the way I described
 3 it, I've got Laurie leaving before that, and that's
 4 not the case.
 5 All of this was going on, and there
 6 was -- I was concerned about Liz. You know, I
 7 thought it was odd that we were having to support
 8 her as much as we did. And -- you know -- I was
 9 alternating between what was going on -- you
 10 know -- with Laurie, with Liz, and just -- you
 11 know -- being in the sweat lodge, which was its own
 12 thing. But it was getting long. Liz was puzzling
 13 me. I became concerned. And during one of the
 14 breaks I spoke up.
 15 Q. Do you recall what break it was?
 16 A. I think it was after the sixth round.
 17 Q. And by "break," what do you mean?
 18 A. When the door of the sweat lodge was
 19 open.
 20 Q. And before you tell us what you did, what
 21 specifically about Liz Neuman concerned you?
 22 A. Well, on some level I was concerned from
 23 the moment that she moved forward and closer to the
 24 stones. You know, then when she got up and sat --
 25 you know -- again, it was -- it wasn't altogether

1 unexpected given the whole idea of inner and outer
 2 row, but it did seem strange to me.
 3 Q. Okay.
 4 A. And it was putting a lot of duress or
 5 extra effort on me and, I imagine, Laurie as well.
 6 Q. Could you hear -- was Liz saying
 7 anything?
 8 A. No.
 9 Q. Could you hear her breathing?
 10 A. I could.
 11 Q. We've heard testimony that there was
 12 other chanting going on. Would you agree that
 13 there was chanting going on in the sweat lodge?
 14 A. Particularly in the early rounds.
 15 Q. Do you recall whether Liz Neuman
 16 participated in the chanting in the early rounds?
 17 A. I believe so.
 18 Q. Did you?
 19 A. No.
 20 Q. At some point did you become aware of
 21 whether Liz was still participating in chanting?
 22 A. Well, it seems to me that all the
 23 chanting wound down.
 24 Q. You talked about being concerned. What
 25 did you do with your concern?

1 A. Well, during one of the breaks or when
 2 the lodge was open, I called out.
 3 Q. Who did you call out to?
 4 A. I called out to Mr. Ray.
 5 Q. Where was Mr. Ray when you called out to
 6 him?
 7 A. As far as I know -- and I was lying down
 8 this whole time. As far as I know, he was over
 9 right near the entrance.
 10 Q. Okay. Could you see when you called out?
 11 A. Not particularly well. There was some
 12 light coming in from the door.
 13 Q. The door was open when you called out?
 14 A. Yes.
 15 Q. Tell the jury what you said when you
 16 called out.
 17 A. The first time that I called out, I said,
 18 James, I'm concerned about Liz.
 19 Q. What sort of voice did you use?
 20 A. I used my own normal voice.
 21 Q. Okay. Did Mr. Ray answer you?
 22 A. Not initially.
 23 Q. What did you do?
 24 A. Well, I wasn't sure if I was loud enough.
 25 So I propped myself up a little bit, and then I

1 made more of an effort to project.
 2 Q. Okay. And what did you say?
 3 A. I said, James, it's Laura. I'm concerned
 4 about Liz.
 5 Q. You just used kind of a quiet tone here
 6 in court. Is that the same tone you used?
 7 A. No. It was more forceful than that. I
 8 wasn't screaming or yelling or anything like that.
 9 Q. Did Mr. Ray respond the second time you
 10 called out?
 11 A. He did.
 12 Q. And what did he say?
 13 A. He said, Liz has done this before, Laura.
 14 She knows what she's doing.
 15 Q. After you called out with your concern
 16 about Liz Neuman, did Mr. Ray come over and check
 17 on Liz?
 18 A. No.
 19 Q. Did he ask any of his staff to check on
 20 Liz?
 21 A. No.
 22 Q. Did he ask any of his Dream Team members
 23 to check on Liz?
 24 A. No.
 25 Q. Did he ask you for any further

1 information about Liz and what was concerning you?
 2 **A. No.**
 3 **Q.** Did he move from his position at all when
 4 he answered you?
 5 **A. Not that I'm aware.**
 6 **Q.** What did you do after Mr. Ray responded
 7 in the way that he did?
 8 **A. I decided I would ask Liz. So I reached**
 9 **up my left hand. I could reach her shoulder. I**
 10 **touched her on her left shoulder to get her**
 11 **attention. And I asked her Liz, are you okay?**
 12 **Q.** Did Liz respond?
 13 **A. She did.**
 14 **Q.** And what did she say?
 15 **A. She said yes.**
 16 **Q.** What sort of voice did Liz use when she
 17 said yes?
 18 **A. It was -- you know -- maybe a little**
 19 **labored.**
 20 **Q.** Was it very loud?
 21 **A. It was loud enough I heard her.**
 22 **Q.** And you were right beside her?
 23 **A. I was right behind her.**
 24 **Q.** Did Liz look at you when she responded?
 25 **A. She turned her head to the left.**

1 **Q.** And where were you?
 2 **A. I was immediately behind her.**
 3 **Q.** Did you do anything further?
 4 **A. I did.**
 5 **Q.** What did you do?
 6 **A. I asked her another question.**
 7 **Q.** What was that?
 8 **A. I asked her if she needed to get out.**
 9 **Q.** Did Liz respond?
 10 **A. She did.**
 11 **Q.** And what did she say?
 12 **A. She said no.**
 13 **Q.** Did any time pass between the time you
 14 asked her that question, did she need to get out,
 15 and she answered?
 16 **A. Only a moment.**
 17 **Q.** What sort of voice did Liz use?
 18 **A. The same.**
 19 **Q.** Did she move at all?
 20 **A. She didn't shift her position or -- you**
 21 **know -- other than the turn of the head to answer**
 22 **me.**
 23 **Q.** Okay. Where was her head at the time
 24 that she answered you? Well, you described for us
 25 Liz lying on your legs. Was she still there during

1 this?
 2 **A. Yes.**
 3 **Q.** Okay. Where was her head specifically?
 4 **A. Well, you have to picture me lying on the**
 5 **ground with my knees up, my shins downward at that**
 6 **point with Laurie with our legs there. She was**
 7 **leaned back on us almost like a chair.**
 8 **So I could reach her by -- you know --**
 9 **sitting partially up and reaching forward so her**
 10 **head was right within reach of me.**
 11 **Q.** Okay. Her head was not on the ground?
 12 **A. No.**
 13 **Q.** Was she supporting herself at all?
 14 **A. That's hard to say.**
 15 **Q.** Did you feel that you were supporting
 16 her?
 17 **A. Well, I knew that I was at least**
 18 **partially supporting her. But I did not think that**
 19 **I was -- or that we were fully supporting her.**
 20 **Q.** And then, Ms. Tucker, after that
 21 conversation with Mr. Ray and then the conversation
 22 you had with Liz, what did you think?
 23 **A. Well, one of the things that I was**
 24 **thinking was that I was ready for this whole thing**
 25 **to be over. And I had Mr. Ray -- you know --**

1 **saying -- you know -- Liz knows what she's doing.**
 2 **I'm not sure if he could see her or not. And I had**
 3 **Liz responding to me promptly and, in my mind,**
 4 **clearly. So I let things be.**
 5 **Q.** At the time were you comfortable with
 6 letting things be?
 7 **A. I'm going to say that's what I did. So**
 8 **yes.**
 9 **Q.** Did you continue to be aware of Liz after
 10 that?
 11 **A. Yeah. I mean, I went back -- this is**
 12 **very late -- in the lodge, towards the end at this**
 13 **point. Laurie had left. And I was -- at that**
 14 **point my thought was okay. We got this far. We**
 15 **can do one more. Let's go.**
 16 **Q.** Did Liz shift her position at all from
 17 that point forward?
 18 **A. No.**
 19 **Q.** Was there any change in her position at
 20 all with respect to you and leaning on you from
 21 that point forward?
 22 **A. No.**
 23 **Q.** Did Liz make any more sounds?
 24 **A. Not that -- I mean, she was there. She**
 25 **was breathing. At no point did she not. She was**

1 6:00 o'clock position?
 2 **A. I could.**
 3 **Q.** Give me your best estimate, if you could?
 4 **A. I can estimate. There were probably 8 or**
 5 **10 people.**
 6 **Q.** Between you -- where you were at the
 7 9:00 o'clock and where Mr. Ray was at the
 8 6:00 o'clock -- would it help to see the diagram?
 9 **A. Sure.**
 10 **Q.** Okay. And I believe that's the way that
 11 Ms. Polk had been orienting it, so I don't want to
 12 confuse you. Okay. So the entrance is down here
 13 at the 6:00 o'clock?
 14 **A. Uh-huh.**
 15 **Q.** All right. Can you press the screen --
 16 **A. Do you mean there?**
 17 **Q.** -- to indicate the entrance?
 18 Yes.
 19 Thank you. You've done that.
 20 Now, where are you at the 9:00 o'clock
 21 position? So in between those two dots that you've
 22 indicated, you believe there were about 8 to 10
 23 people; is that correct?
 24 **A. I believe so. And I think the door was**
 25 **also in between --**

1 **Q.** Okay.
 2 **A. -- if you run around the radius.**
 3 **Q.** Were you aware, then, given where you
 4 were seated, the 9:00 o'clock position, with the
 5 pit in the middle, of what was going on in the
 6 sweat lodge ceremony at the 3:00 o'clock position?
 7 **A. Absolutely not.**
 8 **Q.** And was that because of the darkness?
 9 **A. Yes. It was extremely dark.**
 10 **Q.** And the distance between you and that
 11 section?
 12 **A. Yes.**
 13 **Q.** Do you know approximately what the
 14 circumference -- not the circumference, the
 15 diameter is of the ceremony?
 16 **A. No.**
 17 **Q.** All right. So at no time did you hear
 18 anyone inside the sweat lodge ceremony say
 19 something is wrong with Kirby Brown?
 20 **A. I did not.**
 21 **Q.** You at no time heard someone say
 22 something is wrong with James Shore?
 23 **A. I did not.**
 24 **Q.** Or any other participants?
 25 **A. I did not.**

1 **Q.** Did you ever hear anyone inside the sweat
 2 lodge ceremony say so-and-so is passed out?
 3 **A. Not that I heard.**
 4 **Q.** Did you ever hear anyone inside the
 5 ceremony say so-and-so is unconscious?
 6 **A. I did not.**
 7 **Q.** If you had heard those words,
 8 Ms. Tucker -- so-and-so is passed out or so-and-so
 9 is unconscious -- that would have changed
 10 everything for you inside the ceremony?
 11 **A. It certainly would have shifted my**
 12 **perspective.**
 13 **Q.** To what?
 14 **A. To let's get out of here.**
 15 **Q.** If you had recognized something to be a
 16 life-threatening situation, no ritual, no ceremony
 17 would have stopped you from getting help?
 18 **A. Absolutely not.**
 19 **Q.** My last question for you, Ms. Tucker, is
 20 about Liz. I image that it's been very difficult
 21 for you in the last 15 months. And having been
 22 right next to Liz, you must have thought about this
 23 over and over and over.
 24 **A. There is hardly a day that goes by where**
 25 **I don't think about it.**

1 **Q.** And when you think about the questions
 2 you asked and the answers you heard, if you had
 3 perceived that Liz Neuman was in a life-threatening
 4 situation, what would you have done?
 5 **A. I would have absolutely done everything**
 6 **that I could to help her and anyone else that was**
 7 **at risk.**
 8 **Q.** And you didn't because you didn't see
 9 that risk; is that correct?
 10 **A. I went by what she told me. I went by**
 11 **how -- you know -- initially when I spoke out to**
 12 **Mr. Ray, I still wasn't satisfied. So I asked her.**
 13 **And I went by what she said. I had no idea that**
 14 **there was any cause for immediate concern beyond**
 15 **that. If I had, I would have done everything**
 16 **within my power to stop it and get her out. And**
 17 **that's what I wish happened.**
 18 MS. DO: Thank you, Ms. Tucker.
 19 Nothing further, Your Honor.
 20 THE COURT: Thank you, Ms. Do.
 21 Ladies and gentlemen, we'll take the
 22 afternoon recess. Please be reassembled at
 23 10 minutes after 3:00. Remember the admonition.
 24 And thank you, Ms. Tucker.
 25 You will resume -- the state -- when we

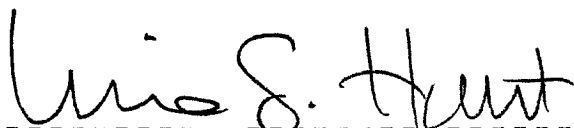
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 14th day of March, 2011.

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19
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23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY ELEVEN
MARCH 8, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 jury heard with the voice of Kirby Brown.
 2 Was Mr. Ray present when Kirby made that
 3 statement?
 4 **A. I believe I heard a background voice of**
 5 **him. The only voices I really heard were his and**
 6 **Kirby's.**
 7 **Q.** I'm asking you a different question. On
 8 that day when Kirby spoke at the open mic, was
 9 Mr. Ray present?
 10 **A. Yes.**
 11 **Q.** And on the audio itself there was a male
 12 voice. Do you know whose male voice that was?
 13 **A. James Ray.**
 14 **Q.** Before we took our break for lunch, we
 15 were talking about the end of the sweat lodge
 16 ceremony and some of the issues that you were
 17 dealing with. I'm going to put back up on the
 18 overhead Exhibit 144.
 19 Just before we broke, you said that you
 20 saw two people outside the sweat lodge, and they
 21 were Kirby Brown and James Shore?
 22 **A. Right.**
 23 **Q.** How was your attention drawn to Kirby
 24 Brown and James Shore?
 25 **A. Hearing they were pulled out, I knew that**

1 **they needed to be watered down.**
 2 **Q.** Did you see them get pulled out?
 3 **A. No.**
 4 **Q.** And when your attention was drawn to
 5 them, can you show us on this Exhibit 144
 6 whereabouts they were.
 7 **A. They were over here.**
 8 **Q.** On the backside of what we can see?
 9 **A. Right.**
 10 **Q.** What did you do, Ms. Haley?
 11 **A. I walked here. It was enough for me to**
 12 **see that they couldn't breathe. They weren't**
 13 **breathing.**
 14 **Q.** I want to talk about James Shore first.
 15 What did you observe about James Shore?
 16 **A. That he wasn't breathing and there was**
 17 **foam coming out of his mouth.**
 18 **Q.** Who was with him?
 19 **A. I don't remember. I don't recall.**
 20 **Q.** What did you do, if anything, with
 21 respect to James Shore?
 22 **A. I first ran to James Ray and told him two**
 23 **people weren't breathing. He needed to come over**
 24 **there.**
 25 **Q.** Where was James Ray when you ran to him?

1 **A. He was sitting here drinking water.**
 2 **Q.** When you told him two people weren't
 3 breathing, what did he say?
 4 **A. He said, get the nurse.**
 5 **Q.** Was there a nurse there?
 6 **A. I didn't know of one. My roommate, Lisa,**
 7 **was a nurse. So I started screaming, who's the**
 8 **nurse? Where's the nurse? And then I just went**
 9 **back over there. And I saw James Shore again and**
 10 **Kirby, and now they were purple.**
 11 **Q.** Let me back you up because I want to ask
 12 you a little more about the nurse. Do you recall
 13 Lisa's last name?
 14 **A. No.**
 15 **Q.** And Lisa was your roommate?
 16 **A. Yes.**
 17 **Q.** And what does that have to do with the
 18 nurse?
 19 **A. Nothing. She was a nurse and I didn't**
 20 **even know.**
 21 **Q.** You roomed with Lisa throughout the week?
 22 **A. Yes.**
 23 **Q.** Nobody had ever told you Lisa was a
 24 nurse?
 25 **A. No.**

1 **Q.** During the week when you received any
 2 training, did anybody from James Ray International
 3 tell you there was a nurse on staff?
 4 **A. No.**
 5 **Q.** When Mr. Ray was yelling for you to get
 6 the nurse, did you know who he was speaking about?
 7 **A. No.**
 8 **Q.** You then went to James Shore. Tell the
 9 jury what happened.
 10 **A. I saw that they were purple, and I ran**
 11 **back again to James Ray and said, they're purple.**
 12 **You need to come over here.**
 13 **And James Ray said, I don't know what to**
 14 **do.**
 15 **So I then went back to James Shore and**
 16 **noticed there was foam and liquid coming out of his**
 17 **mouth and he was purple. And two people were doing**
 18 **CPR, but it wasn't working. So I said, put him on**
 19 **his side.**
 20 **Q.** Who was doing CPR on James Shore?
 21 **A. I'm not sure.**
 22 **Q.** Why did you believe he needed to be put
 23 on his side?
 24 **A. Well, I just noticed the CPR wasn't**
 25 **working. He was getting more purple, and he looked**

1 like he was drowning, although I wouldn't know why
2 he was drowning. And his heart didn't seem to be
3 moving so I just -- let's try something.

4 Q. Did anybody respond when you said, put
5 James Shore on his side?

6 A. Yes.

7 Q. Who responded?

8 A. The two people that were giving CPR. I
9 believe Barbara. I don't know who the other person
10 was.

11 Q. Did you recognize the two people to be --

12 A. Dream Team.

13 Q. Dream Team members. Both?

14 A. Yes.

15 Q. Once you moved James Shore to his side or
16 once James Shore was moved to his side, what
17 happened?

18 A. I started to beat his back as hard as I
19 could thinking I could get water, fluid, or his
20 heart working and did that for about 45, 60
21 seconds.

22 That wasn't working. We put him back
23 down. They went back to CPR. I then went to
24 Kirby.

25 Q. You mentioned a nurse. Did a nurse show

1 take over?

2 And I'm, like, yeah because somebody
3 needs to get James.

4 Q. Let's back up and get some last names.

5 Do you know Melinda's last name?

6 A. No.

7 Q. When your attention then shifted from

8 James Shore to Kirby Brown, Melinda and who else
9 was attending to --

10 A. Lisa.

11 Q. Who was doing the CPR?

12 A. Lisa was doing chest compressions, and
13 Melinda was doing mouth to mouth.

14 Q. When Melinda looked at you and asked you
15 to take over, doing CPR on Kirby?

16 A. Yes.

17 Q. It's your testimony that was okay with
18 you?

19 A. Yes.

20 Q. Had you ever done CPR before on anybody?

21 A. No.

22 Q. Have you ever had training in how to do
23 CPR?

24 A. No.

25 Q. Why were you willing to take over CPR on

1 up while you were attending to James Shore?

2 A. Lisa was with Kirby.

3 Q. And with respect to James Shore, what
4 training have you had to do any sort of emergency
5 medical response?

6 A. None.

7 Q. Do you know what training the other two
8 Dream Team members had had who were attending to
9 James Shore?

10 A. No.

11 Q. What was the condition of James Shore
12 when you left him?

13 A. Purple, foam out of his mouth.

14 Q. Who was tending to James Shore when you
15 left him?

16 A. Two Dream Team members.

17 Q. And what are they doing?

18 A. Giving him CPR.

19 Q. Why did you decide at that point to leave
20 James Shore?

21 A. They were both next to each other, so I
22 didn't really leave. I just looked over at Kirby.

23 And Melinda and Lisa were giving CPR to Kirby.

24 And Melinda, James's assistant for six
25 months, looked up at me and said, do you want to

1 Kirby?

2 A. Because I didn't feel like she was
3 getting enough air. And nobody else was there
4 doing anything. And we needed 9-1-1 called. So
5 I'm there.

6 Q. Okay. Tell us what you did with respect
7 to Kirby then.

8 A. I started getting in as much air as I
9 could and blowing in and taking Lisa's comments,
10 whatever she had to say to do.

11 And we all of a sudden had a doctor
12 present that was a participant that was guiding me
13 with her head and her mouth.

14 And some man came that was there and
15 supported her neck. And I could see the purple go
16 from her abdomen up to here when I started to give
17 her air and we got her head in the right position.

18 Q. Did you notice whether Kirby Brown
19 responded in some way to the CPR?

20 A. In the middle I thought we had her back.
21 I go, I think we got her. There was a slight
22 smile, and it never changed.

23 And her eyes were open the whole time.

24 And I go, look it. James Shore looks like he's got
25 a little smile right now too. So I thought they

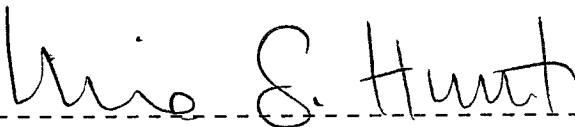
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 21st day of March, 2011.

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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY TWELVE
MARCH 9, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 **Somebody had taken the hose at that time too, and**
 2 **it wasn't reaching everybody.**
 3 Q. It didn't reach Liz Neuman; correct?
 4 A. **Correct.**
 5 Q. Otherwise you would have used it?
 6 A. **I would have tried. I didn't have the**
 7 **hose at the time.**
 8 Q. Okay.
 9 A. **I put --**
 10 Q. Go ahead.
 11 A. **I had put down the hose because I**
 12 **couldn't reach the people.**
 13 Q. Right.
 14 A. **So then I started doing cups.**
 15 Q. Right.
 16 A. **And then the hose wasn't there. So**
 17 **somebody must have taken it at that time.**
 18 Q. Okay. But initially when you tried, you
 19 couldn't reach with it?
 20 A. **Right.**
 21 Q. Now, let's move to James Shore. And by
 22 the way, you had indicated yesterday that at a
 23 distance from the Judge to the state's table, you
 24 were able to hear somebody inside the sweat lodge
 25 scream, who you later found out was Lou Caci, that

1 somebody had fallen into the pit; correct?
 2 MS. POLK: Your Honor, Objection. Misstates
 3 the testimony.
 4 THE COURT: The question can be answered yes
 5 or no. That is an appropriate way to answer. If
 6 it cannot be answered yes or no, then that's the
 7 way to answer.
 8 THE WITNESS: Okay. Can you reask?
 9 Q. BY MS. DO: Sure. Tell me if I'm wrong,
 10 but I believe yesterday you testified that from the
 11 distance you indicated to this jury, from the Judge
 12 to the state's table, where you were standing to
 13 the sweat lodge, at that distance you were able to
 14 hear somebody inside the sweat lodge say somebody
 15 fell into the pit or burned themselves. Correct?
 16 A. **Yes.**
 17 Q. Who you later found out was Lou Caci;
 18 correct?
 19 A. **That he was the one injured.**
 20 Q. Right. No problems hearing that at that
 21 distance; correct?
 22 A. **Not at that time.**
 23 Q. Now, did you at any time, outside the
 24 sweat lodge ceremony, hear somebody say inside Liz
 25 Neuman needs help?

1 A. **No. I didn't hear a name. I heard, you**
 2 **need to get her out. And I don't know who.**
 3 Q. Was that once?
 4 A. **Once that I heard.**
 5 Q. All right. But you never heard anyone
 6 say specifically Liz Neuman needed to come out;
 7 correct?
 8 A. **Correct.**
 9 Q. You also never heard anyone say James
 10 Shore needed help; correct?
 11 A. **Correct.**
 12 Q. Now, when you saw Mr. Shore -- I want to
 13 ask you because you said under direct examination
 14 you saw foaming at the mouth; correct?
 15 A. **Correct.**
 16 Q. And it was significant foaming; correct?
 17 A. **I don't know what significant is. So --**
 18 Q. I didn't just choose that word out of
 19 thin air. I used it because I believe when I
 20 interviewed you on December 16, 2010, I asked you
 21 and you said it was significant. Do you recall
 22 that?
 23 A. **Yes.**
 24 Q. So when you saw Mr. Shore outside the
 25 sweat lodge ceremony, and it was obvious that he

1 was down, the first thing you noticed, he was the
 2 foaming at the mouth?
 3 A. **Correct.**
 4 Q. Because it was really strange to you;
 5 correct?
 6 A. **Correct.**
 7 Q. And you described it to me as is
 8 significant foam?
 9 A. **Correct.**
 10 Q. In fact, you saw that and you started
 11 saying something like he looks like he's drowning;
 12 correct?
 13 A. **Correct.**
 14 Q. And you didn't know where that was coming
 15 from, but it was coming out of his mouth; correct?
 16 A. **Correct.**
 17 Q. And, again, with Mr. Shore you indicated
 18 that you did not -- having the hose earlier, you
 19 did not hose down Mr. Shore down; correct?
 20 A. **Hose didn't reach.**
 21 Q. The hose didn't reach him where he was;
 22 correct?
 23 A. **Correct.**
 24 Q. And because the situation was immediately
 25 apparent to you as being critical, people were

1 say so-and-so is unconscious; correct?

2 **A. Could you repeat that question.**

3 **Q.** You never heard anyone from inside the

4 sweat lodge ceremony say so-and-so is unconscious;

5 correct? It's the same question I asked you.

6 **A. Correct.**

7 **Q.** And you also never heard anyone inside

8 the sweat lodge ceremony say so-and-so has passed

9 out; correct?

10 **A. Correct. All I heard was somebody needed**

11 **to get out. I didn't know why.**

12 **Q.** Okay. Because, Ms. Haley, my last

13 question to you is this: If you had heard somebody

14 inside the sweat lodge ceremony say somebody is

15 unconscious or somebody is dying, what would you

16 have done?

17 **A. I would have tried to help, but I**

18 **certainly wouldn't have opened the door and gone into**

19 **the sweat lodge to do anything. Because James is**

20 **in there.**

21 **Q.** So you would -- I understand. It's your

22 testimony to this jury, that you would not -- you

23 would do what you can, but you wouldn't go as far

24 as to help or to save somebody if you heard those

25 words?

50

1 **A. I don't know that I would be the one to**

2 **save. I would feel that there were people there to**

3 **do it and I would just get in the way. I mean --**

4 **Q.** You wouldn't --

5 **A. If I saw somebody -- if I saw somebody**

6 **not getting help that needed help, I would help.**

7 **Q.** Right. That's a different question.

8 **A. Right.**

9 **Q.** My question is this --

10 **A. So, no.**

11 **Q.** My question is, if you were outside the

12 sweat lodge ceremony and you heard something that

13 indicated to you that there was a life-threatening

14 situation going on inside that ceremony, like

15 so-and-so is unconscious or so-and-so is dying,

16 you're telling this jury that you would not do

17 anything -- let me try and understand this.

18 You would not stop the ceremony. Is that

19 your testimony?

20 **A. If I heard somebody was dying?**

21 **Q.** Yes.

22 **A. I would.**

23 **Q.** If you heard somebody was unconscious,

24 would you stop the ceremony or try?

25 **A. No.**

1 **Q.** Thank you.

2 I have nothing further, Your Honor.

3 Thank you.

4 **THE COURT:** Thank you, Ms. Do.

5 Ms. Polk, redirect?

6 **MS. POLK:** Yes, Your Honor. Thank you.

7 **REDIRECT EXAMINATION**

8 **BY MS. POLK:**

9 **Q.** Good morning, Ms. Haley.

10 **A. Good morning.**

11 **Q.** Would you tell the jury what you did hear

12 from your position outside. What did you hear from

13 the inside throughout the sweat lodge ceremony?

14 **A. I heard that somebody needed to get out.**

15 **I heard chanting. I heard the screaming, somebody**

16 **is on fire, they were on the rocks. Those are the**

17 **different things.**

18 **Q.** When was it that you heard that someone

19 needed to get out?

20 **A. Around the same time that Lou was on the**

21 **rocks. So there was, like, two things being**

22 **screamed at once. We should get her out. Lou is**

23 **getting out. So I focused on Lou, and I didn't**

24 **know if somebody else came out, I guess. Because**

25 **I'm not the only one tending.**

52

1 **Q.** When you were outside the sweat lodge

2 throughout that ceremony, how busy were you?

3 **A. Can you repeat that.**

4 **Q.** How busy were you throughout Mr. Ray's

5 entire sweat lodge ceremony at your position

6 outside?

7 **A. Very busy at the end. From the middle to**

8 **the end, very busy.**

9 **Q.** Were you in a position always to hear

10 what was going on inside?

11 **A. No.**

12 **Q.** Why not?

13 **A. You couldn't hear everything.**

14 **Q.** You told Ms. Do that you would not open

15 the door and interrupt Mr. Ray's ceremony if you

16 had heard somebody was unconscious. Why not?

17 **A. Because he had specified to expect**

18 **anything that -- I don't remember if he said passed**

19 **out. But he said, expect anything could happen.**

20 **People could say crazy things. They can throw up,**

21 **that all these things were normal. And James --**

22 **you don't go against James.**

23 **Q.** What do you mean by that? You don't --

24 and, again, you mean Mr. Ray?

25 **A. Mr. Ray, James Ray.**

1 Q. Where did you see Liz?

2 A. Liz was not very far outside the tent
3 flap. Coming out it was a little bit to the right.
4 And she was lying on her side, and she was
5 unconscious. And as I looked around, she was the
6 only one who didn't have somebody tending to her.

7 I didn't recognize her but -- at the
8 time. But Lou, one of the participants, came by
9 and said, wake up, Liz. Wake up, Liz. So I
10 figured her name was Liz. And so when -- he left.
11 So I stayed with her to make sure she continued to
12 keep breathing.

13 Q. Did you ever try and talk to Liz?

14 A. Yeah. I talked to her. You know.

15 Q. Did she respond back to you?

16 A. No.

17 Q. Were you able to assess what her
18 breathing was like?

19 A. She was breathing regularly. There was
20 saliva and foam coming out of her mouth. That's --

21 Q. Do you --

22 A. -- I mean, what I can tell you.

23 Q. Do you recall -- at some point did you
24 leave the side of Liz?

25 A. No. I stayed with her once I identified

1 her as being unconscious and no one with her. I
2 stayed with her the entire time.

3 Q. What to you mean by "the entire time"?

4 A. Until a paramedic came to start an IV and
5 to take her off the field.

6 Q. Do you know how long a time that took for
7 the paramedics to arrive?

8 A. It seemed like a very long time. Again,
9 my timing is distorted, but I would say at least
10 over half an hour.

11 Q. At some point did you ask or did you
12 speak to the defendant about a 9-1-1 call?

13 A. Yes, I did.

14 Q. Can you tell us the circumstances around
15 that.

16 A. After I had been told to leave the area
17 and I didn't and I was looking around, I had been
18 aware of some people in the back of the tent. And
19 I wasn't sure what was going on there. And this
20 was before I found Liz.

21 So I went to take a closer look at the
22 people at the table and realized they were doing
23 CPR and had been doing CRP. And I was shocked. I
24 could tell that they were doing an okay job. I
25 didn't go over there further. And I saw James

1 standing off to the side. And I said, has anyone
2 called 911? And he just said, it's been taken care
3 of.

4 Q. Did he say anything else other than that?

5 A. No.

6 Q. Now, do you recall what person was the
7 recipient of the CPR? In other words, the patient?

8 A. I did not get close enough to see who
9 they were.

10 Q. Could you tell if it was a man or a
11 woman?

12 A. I couldn't tell.

13 Q. And would you show us, if possible,
14 the -- you said it was on the far side of the sweat
15 lodge?

16 A. Uh-huh.

17 Q. Would you show us on this Exhibit No. 144
18 approximately where around the sweat lodge you were
19 talking about.

20 A. Over in this area.

21 Q. At any time prior to going into the sweat
22 lodge, were participants given a safety plan to
23 follow inside the sweat lodge?

24 A. No.

25 Q. At any time prior to going into the sweat

1 lodge, did Mr. Ray or anyone else tell the
2 participants to check on or keep an eye on their
3 neighbors?

4 A. No.

5 Q. Doctor, did you feel like you had an
6 adequate time to hydrate prior to the sweat lodge
7 and after the Vision Quest?

8 A. James Ray told us to hydrate after the
9 Vision Quest. He didn't initially tell us why.
10 And my interpretation was it was just to correct
11 the dehydration from the Vision Quest.

12 I'm quite sensitive to hydration issues,
13 so I was quite conscientious about hydrating a lot
14 afterward.

15 Q. You said you were sensitive to that. Is
16 that actually what you did, then, between the
17 Vision Quest and the sweat lodge?

18 A. Yes. I drank a lot.

19 Q. The waiver that you signed -- would you
20 have signed that waiver if you had known there was
21 a risk that people could die inside the sweat
22 lodge?

23 MR. KELLY: Your Honor, objection.

24 THE COURT: Sustained.

25 Q. BY MR. HUGHES: Did you believe, prior to

1 recollection.

2 And that is Mr. Ray telling you
3 if -- and I'm not saying this intention, but I'm
4 just going to tell you, one of my teachers taught
5 me a long time ago prepare for the worst and expect
6 the best.

7 So my expectation -- because I know what
8 you can do. My expectation is you're going to come
9 through this like a samurai, and you're going to
10 overcome whatever is going on in your head, this
11 MF'ing James Ray stuff -- right? -- or whatever
12 else you're going to transcend, and then it's going
13 to show you.

14 Do you remember him -- does that refresh
15 your recollection?

16 **A. No.**

17 **Q.** It's going to give you very powerful
18 reference as to what you're capable of doing, what
19 you're really capable of doing. Now, you've got to
20 leave, you just feel like you cannot, then a couple
21 things is that please remember this is extremely
22 hot in the center, and many of you are going to be
23 close to that.

24 Do you recall that advice from Mr. Ray?

25 **A. No.**

1 **Q.** Now, it's a sacred temple. And then he
2 asked a question. And you can only move what way.
3 And what way were you supposed to move out?

4 **A. Clockwise.**

5 **Q.** And he says, clockwise. So if you have
6 leave, then you need to. You're right here. You
7 can't duck out this way. You have to go all the
8 way around and go out the lodge.

9 Now, after every round we'll open the
10 gate for more grandfathers. And sometimes I'll
11 leave it open for a little while just to let some
12 fresh air in.

13 And so you cannot leave during a round if
14 you have -- if you feel you just cannot transcend
15 and overcome this. When the gates are open, if you
16 have to leave, you leave and you leave very, very,
17 very in a controlled manner very carefully.
18 Because there is legs and it's dark. There is legs
19 and there is knees and there is elbows. And -- you
20 know -- the last thing we want is anybody in the
21 pit.

22 Does that refresh your recollection as to
23 the conversation, the presentation, given by
24 Mr. Ray immediately before the sweat lodge?

25 **A. Some of it sounds familiar and some of it**

1 **doesn't.**

2 **Q.** So again, it's been a year and a half,
3 Doctor. A lot of stuff has happened in your life,
4 especially as a physician. So what you're telling
5 this jury is you simply don't remember specific
6 parts of that conversation, not that it didn't
7 happen. Fair statement?

8 **A. Yes.**

9 **Q.** And you remember leaving clockwise;
10 correct?

11 **A. Yes.**

12 **Q.** And you stayed in there for all eight
13 rounds?

14 **A. Yes.**

15 **Q.** At the location we discussed. And then
16 when you left, you left in the clockwise manner;
17 correct?

18 **A. Yes.**

19 **Q.** You went close to the pit. Mr. Hughes
20 asked you that; correct?

21 **A. Yes.**

22 **Q.** You could feel the heat from the rocks;
23 correct?

24 **A. Yes.**

25 **Q.** And you knew, as you're starting to leave

1 this sweat lodge and go all the way around in a
2 clockwise manner, that it's getting hotter and
3 hotter as you're leaving; correct?

4 **A. Yes.**

5 **Q.** And you made the decision to do that;
6 correct?

7 **A. Yes.**

8 **Q.** In other words, you could have just
9 stepped out the door, but you personally made the
10 decision to leave in that more roundabout hotter
11 path; correct?

12 **A. Yes.**

13 **Q.** And as you're leaving, you noticed some
14 other participants on the floor of the sweat lodge;
15 correct?

16 **A. Yes.**

17 **Q.** Now, you had never noticed them prior to
18 that; correct?

19 **A. No.**

20 **Q.** From your location, to the left of the
21 door within six eight feet of Mr. Ray, you did not
22 perceive that these folks were in trouble; correct?

23 **A. Correct.**

24 **Q.** If you would have -- just like my example
25 with Mr. Li, as a medical doctor, you would have

1 went and helped; correct?
 2 **A. Yes.**
 3 **Q.** Now, you told the jury that at one point
 4 in time you heard a fellow by the name of Dennis
 5 outside screaming, I'm going to die, I'm going to
 6 die; correct?
 7 **A. Yes.**
 8 **Q.** But you didn't think he was going to die;
 9 correct?
 10 **A. Correct.**
 11 **Q.** Because if you would, as a medical
 12 doctor, you would have got up out of your seat,
 13 went out that door and helped him; correct?
 14 **A. Correct.**
 15 **Q.** If you would have gotten hot at any time
 16 in here, where you believed that you were not
 17 capable of withstanding the heat, whether that door
 18 was opened or not, you would have went out;
 19 correct?
 20 **A. If it was open, I would have gone out.**
 21 **If it had been closed, it would have been difficult**
 22 **to find the way out.**
 23 **Q.** Okay. But my question is, do you recall
 24 on October 8th interview, you told
 25 Detective Parkison, I never felt my health

1 never knew that Liz Neuman was in distress;
 2 correct?
 3 **A. No.**
 4 **Q.** Is that correct?
 5 **A. That's correct.**
 6 **Q.** And you didn't hear her say anything;
 7 correct?
 8 **A. That's correct.**
 9 **Q.** The same is true for James Shore;
 10 correct?
 11 **A. That's correct.**
 12 **Q.** And Kirby Brown?
 13 **A. That's correct.**
 14 **Q.** Again, ma'am, if you would have known
 15 that, you would have used every ability and every
 16 skill and every ounce of your energy to help those
 17 folks; correct?
 18 **A. Yes.**
 19 **Q.** You had mentioned that you signed a
 20 release.
 21 May I approach, Judge?
 22 THE COURT: Yes.
 23 **Q.** BY MR. KELLY: Doctor, I'm handing you
 24 what's been marked for purposes of identification
 25 as 227. And I ask you to turn to the

1 threatened? I probably would have tried to get
 2 out, if the flap had been closed?
 3 **A. Yes.**
 4 **Q.** Even that flap wasn't going to stop you,
 5 because you're capable of making your own
 6 decisions; correct?
 7 **A. Yes.**
 8 **Q.** And you were capable of getting out of
 9 that sweat lodge if you needed to; correct?
 10 **A. Yes.**
 11 **Q.** You would have helped anyone in medical
 12 distress if that would have been your perception;
 13 correct?
 14 **A. Yes.**
 15 **Q.** Did you know another doctor participating
 16 that week named Dr. Jeannie Armstrong?
 17 **A. Yes.**
 18 **Q.** Dr. Armstrong was participating in the
 19 sweat lodges as well; correct?
 20 **A. Yes.**
 21 **Q.** Do you happen to know whether she was
 22 close to you or in a different location?
 23 **A. I don't know where she was.**
 24 **Q.** When you're in the sweat lodge,
 25 throughout the course of the eight rounds, you

1 next-to-the-last page.
 2 Do you recognize your name and signature?
 3 **A. Yes, I do.**
 4 **Q.** Is this the copy of the release and
 5 waiver of liability and assumption of risk that you
 6 signed?
 7 **A. I believe it is.**
 8 MR. KELLY: Your Honor, I'd move to admit 227.
 9 MR. HUGHES: Your Honor, the state would
 10 stipulate to its admission.
 11 THE COURT: 227 is admitted.
 12 (Exhibit 227 admitted.)
 13 MR. HUGHES: We'd stipulate to 228 as well.
 14 THE COURT: 228 is admitted.
 15 (Exhibit 228 admitted.)
 16 **Q.** BY MR. KELLY: Doctor, I'm handing you
 17 what's been marked as Exhibit 228. Just for your
 18 information, you can look at that number in the
 19 back, if we're referring to an exhibit number.
 20 Let me ask you about 227. You recognize
 21 this as the release that you signed on behalf of
 22 JRI; correct?
 23 **A. Yes.**
 24 **Q.** And I'm going to put 227 up and ask Truc
 25 to blow up the second paragraph.

1 **A. Yes.**
 2 **Q.** And Mr. Ray mistakenly thought that that
 3 was a flashlight; correct?
 4 **A. Yes.**
 5 **Q.** And he yelled out something to the
 6 effect, turn off the light; you're breaking the
 7 ceremony; correct?
 8 **A. Yes.**
 9 **Q.** You believe today that that was the
 10 person leaving out the back side of the tent;
 11 correct?
 12 **A. Yes.**
 13 **MR. HUGHES:** Your Honor, is there a question
 14 pending on Exhibit 228?
 15 **THE COURT:** I don't think there is.
 16 **Mr. Kelly?**
 17 **MR. KELLY:** No. Thank you, Judge.
 18 **Q.** When you left the sweat lodge, you were
 19 exhausted after this experience; correct?
 20 **A. I was very hot and weak.**
 21 **Q.** And you showed us on the exhibit the
 22 direction that you came out. You recall that;
 23 correct?
 24 **A. Yes.**
 25 **Q.** You were offered some water, which you

1 refused. And then you noticed Liz Neuman needed
 2 some help; correct? I'm kind of summarizing
 3 quickly.
 4 **A. Yes -- yes.**
 5 **Q.** That no one else was helping her at that
 6 time?
 7 **A. Correct.**
 8 **Q.** And now you, I take it, go from the role
 9 of a participant to the role as a doctor; correct?
 10 **A. Yes.**
 11 **Q.** And you took her pulse; correct?
 12 **A. I did. I felt her pulse.**
 13 **Q.** And you knew that she was breathing, that
 14 she had a threaded pulse, that she was still alive;
 15 correct?
 16 **A. Yes.**
 17 **Q.** What other physical attributes did you
 18 notice on Ms. Neuman?
 19 **A. Her skin was very, very cold. And I put**
 20 **a towel over her.**
 21 **Q.** Did you see any saliva foam coming from
 22 her mouth?
 23 **A. Yes.**
 24 **Q.** And describe that. About how much?
 25 **A. It was just bubbling. It was very clear.**

1 **It made it easy to make sure that she was**
 2 **breathing.**
 3 **Q.** And you said she was cold. So had she
 4 been hosed down or water put on her?
 5 **A. Yes.**
 6 **Q.** You could tell that by her clothes being
 7 wet?
 8 **A. Right. And her skin temperature.**
 9 **Q.** Did you see who did that?
 10 **A. No, I didn't.**
 11 **Q.** How long do you believe you were there
 12 rendering medical assistance to Ms. Neuman before
 13 the paramedics showed up?
 14 **A. Again, I'm guessing a half an hour.**
 15 **Q.** And was it, then, before you approached
 16 Liz or after that you went up to my client and he
 17 told you that 9-1-1 had been taken care of?
 18 **A. It was before I went to Liz.**
 19 **Q.** So when you were working on her, you had
 20 a belief that the emergency medical responders were
 21 going to show up; correct?
 22 **A. I really wasn't sure what was happening.**
 23 **He didn't tell me that 9-1-1 had been called. He**
 24 **just said it had been taken care of.**
 25 **Q.** And then they showed up after?

1 **A. Yes.**
 2 **Q.** When you left, before you got out of the
 3 sweat lodge, because of the manner in which you
 4 entered, you were the last person to leave?
 5 **A. Yes.**
 6 **Q.** You heard during the course of the sweat
 7 lodge ceremony itself Mr. Ray made reference to the
 8 fact that there was a nurse outside. Do you recall
 9 that?
 10 **A. Yes.**
 11 **Q.** Did you know that nurse?
 12 **A. No.**
 13 **Q.** This may be a silly question, then. When
 14 you're out helping Liz Neuman, you don't know which
 15 of these folks are nurses or not then; correct?
 16 **A. Right.**
 17 **Q.** Did you see Dr. Armstrong helping people?
 18 **A. No.**
 19 **Q.** And she could have been. You just didn't
 20 see her?
 21 **A. Well, I believe she was doing CPR.**
 22 **Q.** Going back Lou Caci. Did you know him?
 23 Did you get a chance to meet him during the event?
 24 **A. Briefly.**
 25 **Q.** When someone fell into the hot rocks, did

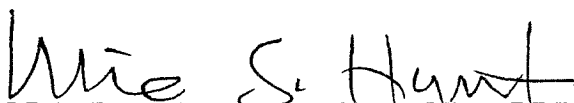
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 29th day of March, 2011.

18
19
20
21
22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY THIRTEEN
MARCH 10, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 NOLS or Outward Bound and other sorts of programs.
2 That is exactly what -- what the disclosure says.
3 He encloses also a whole discussion about
4 sort of that outward bound philosophy about how you
5 do these various programs, what sort of risk
6 management programs you should put in place to run
7 an outdoor adventure program.

8 THE COURT: I've worked on that. And the Far
9 West Water & Sewer, I think is the name of the
10 case. That's really quite instructive on those
11 issues.

12 What occurred to me, I thought I might
13 have mentioned it on the -- at the pretrial on the
14 first day. Maybe I didn't. But there are similar
15 concerns with talking about negligence and what
16 might go to a negligence or possibly a criminal
17 negligence issue and what might go to a charge of
18 manslaughter. There's that same kind of concern
19 there.

20 And I'm very aware of that motion. That
21 was filed relatively recently. And I need to know
22 when a ruling has to be out for planning purposes.
23 And if it needs to, I'll -- I've got the briefs,
24 and I'll go ahead and write something.

25 But I've indicated, Mr. Hughes, one of my

1 concerns. I can see those things -- and I -- going
2 to potential issues of negligence. I'm not
3 commenting one way about ultimately what facts
4 would -- would be. And even the way you phrased it
5 just now, what somebody should do as opposed to
6 consciously disregarding.

7 MR. HUGHES: Your Honor --

8 THE COURT: There are issues about what
9 someone would know. And if you think in the Far
10 West Water & Sewer, there's a real discussion in
11 there about the actual knowledge of those
12 regulations and those things.

13 Mr. Hughes?

14 MR. HUGHES: Your Honor, first, with respect
15 to when the Court's ruling needs to be issued, we
16 do not intend to call Mr. Pace for, say, the next
17 two weeks or so. So there's a little time on that.

18 With respect to the relevancy, if you
19 will, of Mr. Pace's testimony, it goes beyond
20 negligence because the standard in this case of
21 recklessness looks at what a reasonable person in
22 Mr. Ray's situation would do or should do. And
23 that's what Mr. Pace's testimony is.

24 Jurors coming into this are not in a
25 position to know what the leader of an adventure

1 program, which would be a reasonable person in the
2 defendant's situation, should know or should --
3 should -- should be aware of.

4 It's the state's burden to present the
5 jury with that proof. And we are calling Mr. Pace
6 to provide that information of what a reasonable
7 person in that situation.

8 MR. LI: Your Honor, I beg to differ. The
9 disclosure says consideration used to assess
10 program safety. And then it goes on for pages
11 about manuals, hiring practices, et cetera. These
12 are corporate policies.

13 This is exactly what you would do if you
14 were looking at a trading company and whether it
15 complies with FCC regulations. And you would look
16 at the company and you'd use it to assess whether
17 it's in compliance with various rules.

18 This is not about an individual -- what a
19 sweat lodge -- a person who runs a sweat lodge
20 should do. This is about what a company should do.
21 JRI was a company. Mr. Ray was its spokesperson.

22 It's as if we had the Steve Nash
23 basketball camp. And there's a Steve Nash,
24 Incorporated, that puts on basketball camps for all
25 kinds of folks. Steve Nash, Incorporated, might

1 have some liability issues if it doesn't put in
2 place good program safety rules. But Steve Nash's
3 role is, essentially, to come out and motivate
4 people to shoot baskets and shoot them well.

5 There's a big difference. And I know
6 that the Court is aware of this. So I won't --

7 THE COURT: I just want to say I did not want
8 to have a complete oral argument at this time. And
9 I don't want either side to feel you need to do
10 that. If we have to assemble at 8:30 on the
11 morning that -- not the morning that it's
12 anticipated this witness would be here. We need to
13 do it ahead of that.

14 MR. LI: I don't think it's quite right that
15 we have a couple weeks to deal with it because one
16 of issues is this: There are a lot of questions
17 the state is asking that blur the line between
18 individual and corporate.

19 The fact that these folks are signing
20 waivers -- you know -- that the corporation gave
21 them -- I mean, by the way, the waivers also
22 relate --

23 THE COURT: Mr. Li, I'm only going to say,
24 look at who the parties are in the Far West case
25 and look at what the history is that's recited in

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3

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14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 22nd day of March, 2011.

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24

25

MINA G. HUNT, AZ CR No. 50619
CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
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Plaintiff,)
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JAMES ARTHUR RAY,)
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Defendant.)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY SEVENTEEN

MARCH 17, 2011

Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 outside the tent right around there. I know they
2 attended to her. Can't remember who they are, but
3 someone was helping.

4 Q. Describe for the jury generally what you
5 saw once you came outside after the last round.

6 A. I saw people puking. I saw people
7 agonizing. I saw Stephen Ray foaming at the mouth.
8 It looked like his eyes were bulging out. As I
9 mentioned, it looked like -- I've seen it in
10 Hollywood, but it looked like a battleground.
11 People just laying there.

12 Q. Did you know someone named Sean Ronan?

13 A. Yes.

14 Q. Was Sean Ronan inside the sweat lodge?

15 A. Yes. Sean -- actually, I just
16 recollected something now. Sean was inside the
17 sweat lodge. He was -- right after he was done, he
18 was delirious. I know that someone helped him out.
19 I think he was stir crazy.

20 Q. Describe for us specifically what you
21 observed about Sean that makes you use those words
22 "delirious" and "stir crazy."

23 A. He was crawling back and forth. He was
24 mumbling some words. Who knows what he was saying.

25 Q. Where were you when you saw Sean crawling

1 back and forth?

2 A. I was trying to help out Linda.

3 Q. Do you know what happened to Sean?

4 A. I believe we were in the same ambulance
5 together on the way to Verde Valley.

6 Q. And do you know how Sean got out of the
7 tent?

8 A. Not really.

9 Q. You mentioned seeing somebody do CPR.
10 How was your attention drawn to that scene?

11 A. I believe -- if I was here, I saw them
12 doing CPR right about over there. And I was told
13 to stay back, and I did.

14 Q. Who told you to stay back?

15 A. I remember seeing Mr. Ray standing there.
16 And he told me to stay back, and I did.

17 Q. Okay. Do you know who they were doing --
18 did you know who they were doing CPR on?

19 A. I did not know.

20 Q. With respect to the scene, did you see
21 people being cooled down?

22 A. Being cooled down. Yes. They were
23 spraying water on the folks. And we were told to
24 drink fluids and we did.

25 Q. Did you see Liz Neuman outside?

1 A. Yeah. She was -- I can't recall. But
2 she was laying somewhere around here.

3 Can we raise this?

4 Q. Yes.

5 A. I know they were putting blankets on her.
6 I don't know. I guess it was right around here.

7 Q. Did you see anyone cooling Liz down with
8 water?

9 A. Yeah. They were getting, I guess, wet
10 towels and putting them on her body.

11 Q. Did you see whether or not Liz Neuman was
12 sprayed with water?

13 A. I can't remember. Probably she was.

14 Q. And with respect to Stephen Ray, how was
15 he being cooled down that you saw?

16 A. Well, I'm assuming it was the same
17 procedure. They were putting cool towels on and
18 spraying water. I mean, there was nothing else he
19 could really do.

20 MR. LI: Your Honor, I move to strike after
21 "I'm assuming."

22 THE COURT: Sustained. Granted.

23 MR. LI: Thank you, Your Honor.

24 Q. BY MS. POLK: This photograph that's up
25 on the overhead shows a dry -- shows dry dirt. Did

1 that -- in terms of it being dry or not dry, did
2 that change after the ceremony was over?

3 A. I can't recall. You can see here there
4 is tarps. There was, I guess, tarps laying down
5 right around here. So I know that this whole area
6 was wet.

7 MR. LI: Your Honor, I'd move to strike after
8 "I don't recall."

9 THE COURT: Sustained. And granted.

10 Q. BY MS. POLK: What can you testify to,
11 Mr. Caci, that was wet?

12 MR. LI: Your Honor, objection as to form.

13 THE COURT: Sustained.

14 Q. BY MS. POLK: Mr. Caci, did you see areas
15 that were wet when you came out of the sweat lodge?

16 A. Yes.

17 Q. And show the jury where. I'll clear it.

18 A. Here and here. This whole area right
19 around here.

20 Q. And how wet was it? What did you
21 observe?

22 A. Well, if you're spraying a hose, it's
23 normal to get the whole area wet. I mean --

24 Q. And then I want to go back to inside the
25 sweat lodge, a photograph that I was looking for

1 Q. I understand that. But you assumed that?
 2 You're not a doctor. You don't know what caused
 3 them to die, do you?
 4 A. Yes. I assumed that.
 5 Q. And did you know, for instance, that
 6 Stephen Ray, who you were asked questions about
 7 with Ms. Polk -- remember Stephen Ray?
 8 A. Yes, I do.
 9 Q. You saw him foaming in the mouth?
 10 A. Yes.
 11 Q. Did you know that he was diagnosed that
 12 he did not have heat stroke?
 13 MS. POLK: Objection. Misstates the facts,
 14 Your Honor.
 15 THE COURT: Sustained.
 16 Q. BY MR. LI: Did you know that people
 17 suspected he had been poisoned?
 18 MS. POLK: Your Honor, objection to this line
 19 of questioning.
 20 THE COURT: Sustained.
 21 Q. BY MR. LI: Did the state ever tell you
 22 that the medical records for Stephen Ray indicate
 23 that he was suspected of having been poisoned --
 24 A. No.
 25 Q. -- just like you?

1 MS. POLK: Your Honor, objection.
 2 THE COURT: Sustained.
 3 Q. BY MR. LI: Your medical records suggest
 4 that there was a suspicion that you had been
 5 exposed to toxic fumes?
 6 MS. POLK: Objection to characterizing the
 7 medical records.
 8 THE COURT: Sustained.
 9 Q. BY MR. LI: Your medical records --
 10 A. Yes.
 11 Q. Your doctor said, we suspect that there
 12 has -- there were toxic fumes or carbon monoxide;
 13 correct?
 14 A. Correct.
 15 Q. I want to go back a little bit to the
 16 various activities you did during the week. Okay?
 17 There was a haircutting activity?
 18 A. Yes.
 19 Q. And that was difficult for you?
 20 A. Yes.
 21 Q. But you learned a lot?
 22 A. Yes.
 23 Q. And what you learned was you were
 24 attached to your appearance a bit?
 25 A. Yes.

1 Q. Did you do yoga?
 2 A. Yes.
 3 Q. Was that pretty easy for you?
 4 A. Not really.
 5 Q. Okay. But tell me how hard it was.
 6 A. Well, there was some stretches that were
 7 difficult.
 8 Q. But it's just stretching?
 9 A. That's what yoga is. It's stretching,
 10 moving energy through your body.
 11 Q. It's not mind control?
 12 A. No. It's a practice.
 13 Q. You wrote in your journal?
 14 A. Yes.
 15 Q. And there were difficult aspects of that
 16 too; correct?
 17 A. Yes, there were.
 18 Q. Sometimes you have to be honest?
 19 A. Brutally honest. Yes.
 20 Q. And say things that don't make you proud?
 21 A. Uh-huh.
 22 Q. Correct?
 23 A. Yes.
 24 Q. And I'm not going to ask you about any of
 25 the specifics of that. But part of being a man is

1 facing things that are very difficult about
 2 yourself; correct?
 3 A. Yes.
 4 Q. Now, did anyone tell you what you were
 5 supposed to write about, the exact words you were
 6 supposed to write?
 7 A. No.
 8 Q. Did anyone tell you what issues you had
 9 to deal with?
 10 A. No.
 11 Q. It was up to you whether you wanted to
 12 share any of your personal information with other
 13 people or not; right?
 14 A. Correct.
 15 Q. Nobody forced you to write things down
 16 and then tell everybody here are all my
 17 deficiencies; correct?
 18 A. Correct.
 19 Q. You did some breathing exercises?
 20 A. Yes.
 21 Q. And, essentially, you had a CD, and you
 22 listened to things on earphones; correct?
 23 A. Yes.
 24 Q. And, basically, the CD that you listened
 25 to on your earphones was like the sound of rain

1 help right now.
 2 **A. Absolutely.**
 3 **Q.** And you might even yell louder than I
 4 just did.
 5 **A. I would.**
 6 **Q.** And if you had your cell phone, you would
 7 hit 9-1-1?
 8 **A. Correct.**
 9 **Q.** And you don't even know Mr. Kelly?
 10 **A. No, I don't.**
 11 **Q.** But you'd help him out; correct?
 12 **A. Yes, I would.**
 13 **Q.** I want to talk to you for a second about
 14 Liz Neuman. And I want you to keep in mind what I
 15 said at the beginning of this, that 20/20 is
 16 perfect hindsight. Are we clear on that?
 17 **A. We're clear.**
 18 **Q.** Okay. When you saw Ms. Neuman --
 19 **A. Yes.**
 20 **Q.** -- you thought she wasn't doing so well?
 21 **A. No, I did not.**
 22 **Q.** But you, Mr. Caci, you didn't raise your
 23 hand and yell, we got to help her?
 24 **A. No, I didn't. I am pissed about that.**
 25 **Q.** And I understand that. And you got to

1 let it go.
 2 My question to you is, you didn't know at
 3 that moment that she was dying, did you?
 4 **A. Why didn't anybody else look after her?**
 5 **Q.** My question is --
 6 **A. Okay. I understand your question. No.**
 7 **Q.** You didn't, did you?
 8 **A. No, I didn't.**
 9 **Q.** You didn't know that a woman you had your
 10 hands on -- nobody is blaming you. You didn't know
 11 that a woman that you had your hands on was dying,
 12 did you?
 13 **A. No, I did not.**
 14 **Q.** Ms. Tucker, who was sitting right next to
 15 Liz Neuman -- she didn't know anything either?
 16 MS. POLK: Objection. Foundation.
 17 THE COURT: Sustained.
 18 MR. LI: Let me rephrase that.
 19 **Q.** She didn't do anything either, did she?
 20 **A. I guess not.**
 21 **Q.** Nobody knew that Ms. Neuman was dying?
 22 MS. POLK: Objection. Foundation.
 23 THE COURT: Sustained.
 24 **Q.** BY MR. LI: Had you known Liz Neuman was
 25 dying, you would have done everything in your power

1 to save her; isn't that true?
 2 **A. Yes, I would have.**
 3 **Q.** Thank you.
 4 THE COURT: Thank you, Counsel.
 5 Ms. Polk.
 6 MS. POLK: Thank you, Judge.
 7 MR. LI: Judge, can we take a moment?
 8 THE COURT: Yes. We'll take a recess for a
 9 few minutes. About 10 minutes, ladies and
 10 gentlemen. Please remember the admonition.
 11 (Recess.)
 12 THE COURT: The record will show the presence
 13 of the defendant, Mr. Ray, the attorneys, and the
 14 jury.
 15 Mr. Caci is on the witness stand.
 16 Ms. Polk.
 17 MS. POLK: Thank you, Your Honor.
 18 REDIRECT EXAMINATION
 19 BY MS. POLK:
 20 **Q.** Mr. Caci, in response to a question from
 21 Mr. Li, he was asking you if you knew that doctors
 22 and engineers were present at Spiritual
 23 Warrior 2009. You said you did not know that there
 24 were any doctors there. Do you recall that?
 25 **A. Yes, I did. I do remember now. I can't**

1 **remember her name, but she had blond hair. I think**
 2 **she was a dentist.**
 3 **Q.** Is that Dr. Beverly Bunn?
 4 **A. Yes.**
 5 **Q.** Did you know at the time that she was a
 6 dentist?
 7 **A. I can't -- I believe I do remember it**
 8 **being mentioned during the course of the week at**
 9 **the seminar.**
 10 **Q.** Okay. Did you ever know if there was a
 11 nurse present?
 12 **A. No. I did not know.**
 13 **Q.** Did Mr. Ray himself ever tell you that
 14 there was any medical personnel outside his sweat
 15 lodge?
 16 **A. No.**
 17 **Q.** You were asked some questions about the
 18 waivers that you signed. And I'm going to
 19 specifically show you Exhibit 173, which is the
 20 Spiritual Warrior waiver. Will you look at that
 21 and tell the jury who signed that document.
 22 **A. I signed it.**
 23 **Q.** And who else signed it?
 24 **A. Gabriela Casineanu.**
 25 **Q.** Who was Gabriela?

1 distress.

2 Q. And what do you mean by "appeared to be
3 in distress"?

4 A. She had her eyes closed. She appeared to
5 have mucus in her nose and some frothy sputum,
6 which is liquid coming from your mouth. And she --
7 you know -- was -- I don't know if I thought at
8 that instant that she looked like she may be
9 delirious. But she definitely was not at a normal
10 state of consciousness.

11 Q. And do you know who the woman was?

12 A. Her name was Sidney.

13 Q. And did you provide any help?

14 A. Yes.

15 Q. What did you do?

16 A. I didn't know her other than her name was
17 Sidney. So I, basically, just went through the
18 ABCs. I could see that her chest was rising, so
19 she was breathing. I felt for a pulse. She had a
20 strong pulse at that time.

21 Because she was not in a normal state of
22 conscious, I did something called a "sternal rub"
23 where you take your knuckles and painfully rub on
24 someone's sternum. It's a painful stimuli to see
25 how neurologically someone is intact or they will

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1 withdraw from that stimuli is how they will
2 respond. She had a blunted response to that. And,
3 basically, I said we need to call an ambulance.

4 Q. You mentioned you checked on the ABCs.
5 Can you tell us what you meant by that.

6 A. So if someone is in distress, in the
7 priority in terms of maintaining life is airway,
8 breathing, and circulation, so ABC. If you don't
9 have a patent airway, you can't get air in.
10 Breathing is also the act of having respiration.
11 And circulation and having a pulse is that your
12 heart is beating.

13 Q. And at some point did you leave Sidney
14 and move to somewhere else?

15 A. Yes.

16 Q. When did that happen?

17 A. Literally I did the sternal rub on
18 Sidney. She had -- like I said, she had a pulse
19 and she was breathing. And someone, I believe it
20 was Bret, said, they're doing CPR over there. And
21 he pointed in the opposite direction. I said,
22 well, do you feel comfortable? You know,
23 basically, as long as she continued to breathe,
24 there is nothing else to do at this moment. Can I
25 go over there? He said, yes. And I ran to where I

1 saw people doing CPR.

2 Q. Had you -- prior to that occasion, had
3 you told Bret that you were a doctor?

4 A. When I came -- when he said he needed
5 help, when I came upon, I identified myself as
6 being a doctor. Yes.

7 Q. Had you identified yourself to the
8 participants -- on days before that sweat lodge
9 day, did you tell them you were a doctor?

10 A. Randomly it came up in a conversation
11 that we were having about something else, like what
12 profession someone was in. I told -- I would --
13 yes. I would tell them what I did. But I didn't
14 make an announcement to the group.

15 Q. You weren't wearing a name tag saying
16 Dr. Armstrong?

17 A. I was not.

18 Q. You mentioned, then, you went over and
19 found CPR being performed?

20 A. So someone had said they're performing
21 CPR. I couldn't see it from where I was because I
22 was kneeled down. When I stood up, I could sort of
23 tell there were several people gathered around. As
24 I ran to where that was, I could tell they were
25 performing CPR yes.

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1 Q. And can you show us on this exhibit,
2 which I believe is still 144 -- it is. Can you
3 show us approximately the location where it is that
4 you saw the CPR being performed.

5 A. I'd call it behind, but, basically, over
6 here. Like, next to the lodge but behind it, the
7 other side of it.

8 Q. Was it kind of in that general area?

9 A. Yes.

10 Q. Okay. And could you at that point see
11 whom was receiving the CPR, the patient?

12 A. Based on clothing, I could see that it
13 was a male and a female.

14 Q. And at that point did you know their
15 names?

16 A. I didn't at that exact moment. As we
17 were performing CPR and assessing the situation,
18 somebody mentioned Kirby by name. And later I
19 learned of James Shore's name.

20 Q. And can you tell me who it was who was
21 performing CPR when you went over to that location?

22 A. I cannot tell you who was performing. I
23 believe a person named Barb might have been
24 performing the compressions at that point on James.
25 And there was another woman with dark hair, who I

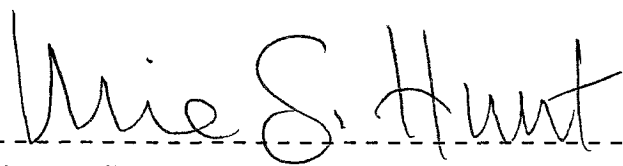
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 28th day of March, 2011.

18
19
20
21
22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)

Plaintiff,)

vs.)

Case No. V1300CR201080049

JAMES ARTHUR RAY,)

Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY EIGHTEEN

MARCH 18, 2011

Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 **A. In the state of Indiana, when you**
2 **complete your medical school education, you receive**
3 **a temporary license to practice medicine. Most**
4 **people go on for further training. And that**
5 **training is called a "residency." It's anywhere**
6 **between three and six years, depending on the**
7 **specialty.**

8 **And generally, by completing the**
9 **residency, you're allowed to sit for board**
10 **certification. So you become specialized and**
11 **certified in whatever area of medicine that you**
12 **practice. It's in a hospital/outpatient. You do**
13 **different rotations. So every month you're**
14 **learning some new aspect of what you're doing.**
15 **Very similar to medicine.**

16 **This is all hands on, and you're actually**
17 **caring for patients and increasing levels of**
18 **responsibility during that three-year period.**

19 **Q. So you are treating patients; correct?**

20 **A. Yes.**

21 **Q. Now, you said that it allows you to**
22 **become board certified. Are you board certified?**

23 **A. Yes.**

24 **Q. What are you board certified in?**

25 **A. Family medicine.**

1 **Q. If I understand your explanation, family**
2 **medicine, basically, encompasses treating patients**
3 **from birth to death?**

4 **A. Correct.**

5 **Q. So you are trained and educated in**
6 **diagnosing illnesses from birth to death?**

7 **A. Correct.**

8 **Q. And to treat them; correct?**

9 **A. Yes.**

10 **Q. Now, I understand that doctors are -- I**
11 **think it's more of a tradition now -- take what's**
12 **call a "Hippocratic Oath."**

13 **A. Yes.**

14 **Q. That's an oath swearing that you will**
15 **practice medicine ethically; correct?**

16 **A. Yes.**

17 **Q. And there is a part in the oath that I'd**
18 **like to ask you about. There is a phrase. And**
19 **that oath that says, I will remember that I remain**
20 **a member of society, with special obligations to**
21 **all my fellow human beings, those sound of mind and**
22 **body as well as the infirm. That's part of the**
23 **oath; correct?**

24 **A. I don't have the oath memorized. But I**
25 **would assume it's part of it. It sounds correct.**

1 **Q. You took it when you first began**
2 **practicing as a doctor?**

3 **A. We took it as part of our graduation**
4 **ceremony in 1997.**

5 **Q. Let me try to understand that phrase. If**
6 **you were, for example, walking down the street just**
7 **minding your own business and you see a terrible**
8 **car accident and somebody might be terribly hurt,**
9 **you would run over to that scene and you would say,**
10 **I'm a doctor? Does anyone need help?**

11 **A. Correct.**

12 **Q. That's the special obligation that you**
13 **have as a doctor to your fellow human beings;**
14 **correct?**

15 **A. Yes.**

16 **Q. And so in some ways as a doctor, you're**
17 **never really off duty; correct?**

18 **A. Yes.**

19 **Q. In fact, I understand right now you're**
20 **kind of on vacation.**

21 **A. This is my spring break. Yes.**

22 **Q. And you stayed over so that you could**
23 **testify?**

24 **A. Yes.**

25 **Q. Now, you are trained to recognize and act**

1 **in medical emergencies; correct?**

2 **A. Yes.**

3 **Q. And so assuming that the average person**
4 **is someone who has not had medical training or**
5 **medical education, you are better than the average**
6 **person in recognizing signs of illnesses; correct?**

7 **A. I would assume so.**

8 **Q. You're better than the average person in**
9 **recognizing signs of medical distress?**

10 **A. I would assume so.**

11 **Q. You're better than the average person in**
12 **recognizing signs of severe trauma?**

13 **A. I would assume so. Yes.**

14 **Q. And you would be better than the average**
15 **person in recognizing the signs or the risk of**
16 **death?**

17 **A. I would assume so.**

18 **Q. If you recognize the signs of any one of**
19 **those things, from illnesses to risk of death, you**
20 **would, with your special obligations to your fellow**
21 **human beings, act; correct?**

22 **A. Yes.**

23 **Q. To render aid?**

24 **A. Yes.**

25 **Q. And that would be an obligation that you**

1 would have regardless of the situation or the
 2 environment that surrounds you; correct?
 3 **A. Yes.**
 4 **Q.** I'm going to borrow Mr. Kelly's example
 5 he's used a number of times here. You're here in
 6 this courtroom, and Judge Darrow controls it;
 7 correct?
 8 **A. I assume so.**
 9 **Q.** Judge Darrow decides when we recess;
 10 correct?
 11 **A. I assume so.**
 12 **Q.** You've seen that happen like yesterday;
 13 correct?
 14 **A. Yes.**
 15 **Q.** And he tells us -- or if he tells us to
 16 stand, we stand; right?
 17 **A. Yes.**
 18 **Q.** So if during my examination of you, my
 19 partner over here, Tom Kelly, collapses, you would
 20 at that very moment jump out of that witness stand
 21 to render aid to Mr. Kelly; correct?
 22 **A. Yes.**
 23 **Q.** You would do that even if we were in
 24 process in session; correct?
 25 **A. Yes.**

1 **Q.** You wouldn't wait for someone to say
 2 court's in recess.
 3 **A. No.**
 4 **Q.** All right. So as a doctor with your
 5 special obligations to fellow human beings, you
 6 would act to render aid no matter whether or not
 7 there is a ritual or ceremony or proceeding?
 8 Nothing like that would stop you from acting?
 9 **A. No.**
 10 **Q.** Now, let me talk a little bit about your
 11 experience in the sweat lodge ceremony. You've
 12 already explained to us --
 13 And let me put up 414, which has already
 14 been admitted.
 15 This is a rough diagram of the sweat
 16 lodge that Mr. Hughes showed you yesterday. And
 17 you indicated that you went into the sweat lodge
 18 and took the seven-and-a-half o'clock position; is
 19 that correct?
 20 **A. Yes. But that image was oriented**
 21 **differently yesterday.**
 22 **Q.** Let me reorient it for you. It was
 23 oriented with the entrance at the south end; right?
 24 **A. Correct.**
 25 **Q.** So if we're using -- looking at it as a

1 face of the watch, the entrance would be the
 2 6:00 o'clock position; is that right?
 3 **A. Correct.**
 4 **Q.** You indicated you were at the
 5 seven-and-a-half position. Now, you sat in the
 6 back row initially; correct?
 7 **A. Yes.**
 8 **Q.** But at that moment there was nobody in
 9 front of you?
 10 **A. Correct.**
 11 **Q.** And Christine -- was it Christine
 12 Mattern --
 13 **A. Yes.**
 14 **Q.** -- to your left?
 15 **A. Yes.**
 16 **Q.** And a person named Greg Hartle was in
 17 front of you?
 18 **A. Not when we initially sat down. No.**
 19 **Q.** At some point later Greg Hartle was in
 20 front of you?
 21 **A. Yes.**
 22 **Q.** At some point later a woman named
 23 Beverly, that you described as being blonde, was
 24 also in front of you?
 25 **A. Yes.**

1 **Q.** Do you know if that was Beverly Bunn?
 2 **A. I don't know her last name.**
 3 **Q.** Okay. That's fine. Between you at that
 4 seven-and-a-half position to the flap, you
 5 indicated there were approximately five people
 6 between you and the flap; is that right?
 7 **A. There was at least five. I don't know**
 8 **the exact number.**
 9 **Q.** Okay. Now, could you mark for me on this
 10 diagram, Exhibit 414, where Mr. Ray was seated.
 11 And you've indicated slightly to the
 12 right of the 6:00 o'clock, kind of near the
 13 5:00 o'clock position; correct?
 14 **A. Yeah. Just to the right of the flap.**
 15 **Q.** So closer to the 6:00 o'clock position?
 16 **A. Not at the exact 6:00 o'clock, on account**
 17 **of that was the flap. Between 6:00 and 5:00.**
 18 **Q.** Okay. Now, my understanding is that you
 19 completed the entire ceremony.
 20 **A. Yes.**
 21 **Q.** And I heard you yesterday that you
 22 weren't sure if the entire ceremony was eight
 23 rounds or not. Is that correct?
 24 **A. That is correct.**
 25 **Q.** Assuming it's eight rounds, that means

1 that incident with Lou Caci was life threatening?

2 **A. Absolutely.**

3 **Q.** Now, let's talk about Amy. And I realize
4 you're not sure if Amy happened before Lou. Having
5 had a chance to read the transcript, does that
6 refresh your memory?

7 **A. I don't remember it, but I think I said**
8 **here it was the second thing that happened after**
9 **Lou.**

10 **Q.** With respect to Amy yesterday, you said,
11 at some point you heard somebody say, and I quote
12 you, Amy was unconscious; is that right?

13 **A. Yes.**

14 **Q.** Now, my question to you is, today are you
15 sure that what you heard was the word
16 "unconscious," or did you hear something else?

17 **A. They could have used a more lay term,**
18 **like "passed out." And that, in my mind, would be**
19 **equivalent. Even though it may not actually be, in**
20 **my own mind I make that equivalent. I can't say**
21 **with any degree of certainty. No.**

22 **Q.** And, again, when you spoke to the
23 detectives on October 22nd some weeks after the
24 incident, would your memory have been fresher then?

25 **A. Yes.**

1 **Q.** Would it help you recall what the words
2 were that you heard if you looked at the
3 transcript?

4 **A. Yes.**

5 **Q.** I'll direct you to the same transcript.
6 If you look at page 20, line 13.

7 **A. Yes.**

8 **Q.** Now, looking at that, does it help you
9 recall what it was that you heard that then brought
10 your attention to Amy?

11 **A. What I said at the time was somebody**
12 **said -- you know -- Amy has passed out.**

13 **Q.** Now, directing your attention again to
14 the same transcript, page 24, lines 3 to 6.

15 There again, does that help you refresh
16 your memory that you said for a second time on
17 October 22nd that Amy was passed out, or you heard?

18 **A. Yes. Correct.**

19 **Q.** So when you heard that sentence or that
20 phrase, Amy was passed out, you didn't know who
21 said it; correct?

22 **A. No.**

23 **Q.** And looking again at Exhibit 414, I
24 believe yesterday you testified that you heard that
25 come from this area. Is that right?

1 **A. Yes.**

2 **Q.** I've indicated with a line on Exhibit 414
3 the area between 12:00 o'clock and 3:00 o'clock; is
4 that right?

5 **A. Correct.**

6 **Q.** That's somewhat across from you; correct?

7 **A. Yes.**

8 **Q.** But you were able to hear that?

9 **A. Yes.**

10 **Q.** So whether you had your shirt up or not,
11 you were able to hear it?

12 **A. Yes.**

13 **Q.** Now, when you heard that being said from
14 that zone in the 12:00-to-3:00 o'clock area, you
15 then heard several people say, let's get some guys
16 over there?

17 **A. Yes.**

18 **Q.** You, in fact, also said, let's get some
19 guys over there?

20 **A. I sort of recall that it -- again, people**
21 **kept talking and saying different things. And it**
22 **seemed like it was taking a little bit of time in**
23 **terms of getting the person out. And so I do**
24 **recall, like, to me it's pretty obvious. We're**
25 **little girls. We should send big guys to do that.**

1 **Q.** So did big guys go over there to help?

2 **A. I believe so. Yes.**

3 **Q.** Was there any delay between Amy's passed
4 out to the time some big guys went over there and
5 helped her out?

6 **A. No. It all happened at the same time.**

7 **Q.** She was helped out?

8 **A. To my knowledge, yes.**

9 **Q.** Do you know whether or not Mr. Ray heard
10 what you heard?

11 **A. I have no idea.**

12 **Q.** Did you ever hear Mr. Ray say anything
13 after Amy's passed out? Let's get some guys over
14 there? Did you hear Mr. Ray say no? We're going
15 to wait until the next round?

16 **A. No. I don't recall that.**

17 **Q.** Did you hear or see anything that Mr. Ray
18 did to prevent people from helping Amy out?

19 **A. No.**

20 **Q.** At that point when you heard Amy passed
21 out, Dr. Armstrong, did you think that that was a
22 situation where somebody is in serious medical
23 distress that required your medical attention?

24 **A. At the time I didn't, you know. I felt**
25 **so good, I didn't feel like -- in terms of the**

1 **environment, I didn't feel horrible. And so I**
 2 **really just associated it that she was a really**
 3 **skinny, petite person. And so I just assumed it**
 4 **was more her individual factors that had her**
 5 **succumbed to the heat. So I thought she -- you**
 6 **know -- I didn't think it was serious at the time.**
 7 **No.**

8 **Q.** And you've explained to Mr. Hughes in
 9 some general details that heat illnesses exist on a
 10 spectrum; right?

11 **A. Correct.**

12 **Q.** On the low end you have something as mild
 13 as heat exhaustion; correct?

14 **A. Yes.**

15 **Q.** And on the extreme end you have something
 16 as serious as heat stroke?

17 **A. Yes.**

18 **Q.** Now, you indicated you've never treated
 19 anyone with heat strokes, but you have treated
 20 patients with heat rash, heat exhaustion; correct?

21 **A. Yes.**

22 **Q.** If somebody has heat exhaustion -- by the
 23 way, you have seen cases of heat exhaustion with
 24 high school student athletes practicing on a
 25 football field; correct?

1 **A. Not personally. I know of those stories.**
 2 **Yes.**

3 **Q.** If somebody has heat exhaustion, what you
 4 do is you take them out of the hot environment, you
 5 cool them down; correct?

6 **A. Correct.**

7 **Q.** That is a treatable, reversible
 8 condition; correct? Heat exhaustion.

9 **A. Yes.**

10 **Q.** So Amy got taken out. And at that moment
 11 in time, given what you saw, what you heard, you
 12 didn't think it was a serious situation, a serious
 13 medical distress; correct?

14 **A. At the time, no.**

15 **Q.** Now, had you thought when you heard Amy
 16 is passed out that that was a situation where
 17 somebody was in serious trouble, what would you
 18 have done?

19 **A. I would have left and tried to help in**
 20 **some way.**

21 **Q.** You would have done everything in your
 22 power -- correct? -- to help?

23 **A. Yes.**

24 **Q.** So no ritual, no ceremony, would have
 25 stopped you?

1 **A. No.**

2 **Q.** Christine Mattern, that sat next to
 3 you -- if you saw anything occurring with Christine
 4 that indicated to you that there was something
 5 physically troubling about her, what would you have
 6 done?

7 **A. I would have removed her and rendered**
 8 **whatever care I could.**

9 **Q.** Other than the incident with Lou Caci and
 10 Amy Grimes, Doctor, you didn't hear any other
 11 incident occur inside the sweat lodge ceremony?

12 **A. I was aware of none. No.**

13 **Q.** You didn't hear anyone say somebody is
 14 having problems other than what you heard about Lou
 15 and Amy; correct?

16 **A. Correct.**

17 **Q.** You didn't hear anyone yell out, I need
 18 help?

19 **A. I did not.**

20 **Q.** You didn't hear anyone yell out they were
 21 having a heart attack inside the sweat lodge?

22 **A. I did not.**

23 **Q.** If you had heard someone say, I'm having
 24 a heart attack, Doctor, what would you have done?

25 **A. If I heard someone was having a heart**

1 **attack, I would go to them. And if they were in**
 2 **the sweat lodge, take them out and -- you know --**
 3 **obviously start whatever procedures we could to get**
 4 **them medical care. That would not be normal.**

5 **Q.** If you had heard -- I know that you had
 6 heard somebody say Amy is passed out or, in your
 7 mind, you equate that with unconscious. If you had
 8 heard multiple times somebody saying so-and-so is
 9 unconscious, what would that have done for you,
 10 Doctor?

11 **A. I would think we should go and get that**
 12 **person out. As you mentioned, the first treatment**
 13 **is to get someone into the cool so you can actually**
 14 **assess them. You cannot assess anyone in that**
 15 **environment. It's dark and you can't really see**
 16 **and know what's going on.**

17 **So I would say you would leave and elicit**
 18 **help from whoever was next to you and take that**
 19 **person out.**

20 **Q.** Because if you had heard people screaming
 21 inside multiple times, so-and-so is unconscious,
 22 so-and-so is not breathing, that would have been a
 23 game changer for you; wouldn't it?

24 **A. Absolutely. If someone is not breathing,**
 25 **that's a medical emergency.**

1 knees. And Liz was leaning on us. And I was
2 mostly -- I was more on my back than on my side at
3 that point. I found that it was too much
4 elevation. The change from my face in the dirt to
5 my face up, I couldn't breathe. I just -- I felt
6 like I was suffocating. And then to be touching
7 people and exerting myself to hold her up.

8 And at some point Laura asked, Liz, Liz,
9 do you want to leave?

10 And Liz went, no, no, no. And at the
11 time we both believed her. You know. At this
12 point to me it seems like the no, no, no -- you
13 know -- the friend you really need to take the keys
14 from and not let them drive home.

15 But so we were trying to hold her up, and
16 she was leaning on our legs. And I was just
17 struggling more and more and more until I got to a
18 point where I was just about panicked. And I said,
19 I can't do this. I got to go. And Laura said,
20 okay.

21 Q. And before you continue on, I want to
22 back you up. How did Liz get from where she was
23 seated to leaning on your knees that were
24 intertwined with Laura's knees?

25 A. Somewhere in there she went from sitting

1 up holding herself to leaning back on Laura's
2 knees. So by the end of round 7 when Laura poked
3 me, Liz was leaning on Laura's knees and kind of
4 starting to fall over a little bit my direction.
5 And Laura was struggling to move her knees in such
6 a way that she would hold her upright.

7 Q. Do you know whether Liz Neuman could sit
8 up on her own at that point?

9 MR. LI: Objection. Calls for speculation.

10 THE COURT: That called for a yes or no.

11 You may answer that if you can. If you
12 can respond yes or no, you may do that. If you
13 can't, then let the attorney know that.

14 THE WITNESS: I'm not sure.

15 Q. BY MS. POLK: Did you observe how Liz got
16 from leaning on just Laura to leaning on your knees
17 as well?

18 A. Yes. Laura continued -- as we made that
19 stack of our knees, Laura continued to make sure
20 she was positioned, and I made sure I was
21 positioned such that we wouldn't fall over. But
22 she probably would have fallen over if we hadn't.

23 Q. Liz would have fallen over?

24 A. Yeah.

25 Q. Which way?

1 A. Towards me.

2 Q. If your knees hadn't been there?

3 A. Yes.

4 Q. Before Laura called your attention to
5 Liz, had you noticed anything more about Liz?

6 A. No. I was at that point barely even
7 mentally aware of anything except chanting in my
8 head whatever I could think of that made me happy
9 interspersed with I really want this over.

10 Q. Did you ever hear Laura Tucker call out
11 anything to James Ray about Liz Neuman?

12 A. Yes. At one point she called out that
13 Liz was in trouble. And James Ray yelled back that
14 Liz knew what she was doing.

15 Q. Do you know what round that was or when
16 that was approximately?

17 A. Six or seven probably.

18 Q. Did you hear Liz Neuman respond when
19 James Ray said, Liz knows what she's doing?

20 A. No.

21 Q. The voice that Liz Neuman used when she
22 told Laura Tucker, no, no, no, I don't want to get
23 out -- how loud was that voice?

24 A. Not very loud.

25 Q. And what do you recall specifically Liz

1 Neuman saying?

2 A. All I remember her saying was, no, no,
3 no.

4 Q. Slurred like you just said?

5 A. Yes. Like, really somebody who's very,
6 very, very drunk.

7 Q. What happened next, then, for you?

8 A. Well, Laura said -- so I told Laura -- I
9 said, I can't do this. I have to go. And Laura
10 said, that's okay. I'll take care of Liz. And I
11 took off crawling as fast as I could clockwise
12 around the circle just, like, totally freaked out.
13 The gravel was ripping my knees and my feet and my
14 hands.

15 Q. Do you know when this was that you were
16 trying to get out?

17 A. This was between seven and eight.

18 Q. How many rounds do you believe there
19 were?

20 A. Eight.

21 Q. Was the flap open at this time?

22 A. Yes.

23 Q. Show the jury what direction you chose to
24 try to get out.

25 Can I ask you, Ms. Gennari, if you were

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 29th day of March, 2011.

18
19
20
21
22 *Mina G. Hunt*
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

Case No. V1300CR201080049

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY NINETEEN

MARCH 22, 2011

Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 Q. BY MR. LI: You just didn't hear it?
 2 A. **I was concentrating on my fingers.**
 3 Q. I understand, Ms. Gennari.
 4 A. **My entire being was concentrating on my**
 5 **fingers. I don't know.**
 6 Q. So my question simply is you don't recall
 7 hearing that conversation?
 8 A. **I don't know.**
 9 Q. Okay. And at some point Ms. Tucker asked
 10 Ms. Neuman, do you need to get out of here?
 11 A. **Yes.**
 12 Q. And that's when Ms. Neuman said, no. No.
 13 No?
 14 A. **Yes.**
 15 Q. And I believe on direct on Friday you
 16 said that she sounded like she was drunk.
 17 A. **Yes.**
 18 Q. And that she was slurring?
 19 A. **Yes.**
 20 Q. But that's not what you told
 21 Detective Willingham on October 27, 2009, is it?
 22 A. **I don't know.**
 23 MR. LI: Your Honor, may I approach?
 24 THE COURT: Yes.
 25 MR. LI: You know what. I have the wrong

1 exhibit. Sorry.
 2 Q. And I'd ask you to look at lines 2
 3 through 6.
 4 And, Counsel, that's at page 5.
 5 Have you had a chance to review that?
 6 A. **Yes.**
 7 Q. Is your recollection now refreshed that
 8 you did not say to Detective Willingham that she
 9 sounded drunk?
 10 A. **Yes.**
 11 Q. And, in fact, the -- and you did not say
 12 to Detective Willingham that she was drunk?
 13 A. **No, I didn't.**
 14 Q. And, in fact, the tone you used in --
 15 when you said, what I heard was no, no, no, was not
 16 the same slurring tone you used on direct
 17 examination, was it?
 18 A. **I don't know.**
 19 MR. LI: Your Honor, I'd ask to play
 20 Exhibit 644, clip 1017 through 42.
 21 THE COURT: All right.
 22 MR. LI: Your Honor, is it okay?
 23 THE COURT: Yes.
 24 MR. LI: Thank you. I'm sorry. I didn't
 25 hear.

1 (Exhibit 644 played.)
 2 Q. BY MR. LI: Now, at some point you
 3 decided to leave the lodge; correct?
 4 A. **Yes.**
 5 Q. And then at that point you were told that
 6 the round is over? You got to find a spot?
 7 A. **Yes.**
 8 Q. Okay. We'll get to that in a second.
 9 Now, finishing off this conversation about
 10 Ms. Neuman, you, in fact, did not know that
 11 Ms. Neuman was dying, did you?
 12 A. **No.**
 13 Q. You absolutely did not know that she was
 14 dying at that point, did you?
 15 A. **No.**
 16 Q. Had you known, you would have done
 17 something; correct?
 18 A. **I'd like to think so.**
 19 Q. You'd like to think so. And isn't it
 20 true that you told Detective Willingham that you
 21 didn't know because you're not inside someone's
 22 body and you can't hook them up to a computer like
 23 they do with cars; correct?
 24 A. **True.**
 25 Q. And what you meant by that is that I

1 can't tell what anybody here is feeling better than
 2 what they can tell to themselves; correct?
 3 A. **True.**
 4 Q. Only the person who is sitting there
 5 actually knows how they're feeling; correct?
 6 A. **If they're capable of knowing that, yes.**
 7 Q. And that's what you meant by that. What
 8 you meant was you can't hook a little device into
 9 somebody -- like a computer -- and know how they're
 10 feeling?
 11 A. **Well, and I can't also determine whether**
 12 **they are right about what they are reporting they**
 13 **are feeling.**
 14 Q. I understand that. But you don't know
 15 one way or the another; correct?
 16 A. **No.**
 17 Q. And, in fact, you told
 18 Detective Willingham, how do you know what's going
 19 on in there; isn't that true?
 20 A. **I don't specifically remember.**
 21 Q. Would it refresh your recollection to
 22 look at your -- the transcript of your interview?
 23 This is page, Counsel, 23, lines 20
 24 through 22.
 25 May I approach?

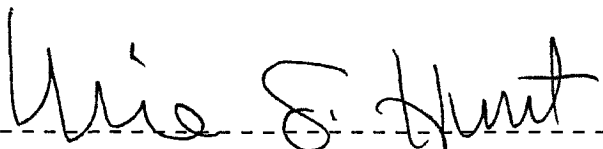
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2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

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12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 1st day of April, 2011.

18
19
20
21
22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY TWENTY-THREE
MARCH 29, 2011
Camp Verde, Arizona
(Partial transcript.)

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 triaged at the emergency department.

2 **A. For the records I have then is I was told**
3 **that she had a Glasgow coma score of 10 in the**
4 **field and it rapidly declined to 6 before she was**
5 **intubated.**

6 **Q.** And do you know what -- do you happen to
7 know what her temperature was, then, when she was
8 first seen at the emergency department?

9 **A. Initial one I saw reported was 36.**

10 **Q.** And what was her pulse?

11 **A. Pulse was 80 again at the time she came**
12 **into the intensive care unit.**

13 **Q.** Did you have an opinion as to what
14 illness or illnesses Ms. Spencer was suffering from
15 when you saw her?

16 **A. I guess the approach was to assume that**
17 **we had the same process going on with all three,**
18 **which we didn't know that for sure at the time. We**
19 **had four patients admitted in a very short time**
20 **frame.**

21 **Q.** And do you know whether any testing was
22 done, as it was with Ms. Neuman, to determine if
23 there was any carbon monoxide poisoning?

24 **A. Yes. There was testing done.**

25 **Q.** And do you know what the results of that

1 testing were?

2 **A. Carboxyhemoglobin was zero.**

3 **Q.** And what does that tell you?

4 **A. No significance carbon monoxide exposure.**

5 **Q.** And do you know whether Ms. Spencer -- if
6 she arrived at the emergency department at 1755, do
7 you know whether there was any cooling of
8 Ms. Spencer before she arrived at the emergency
9 department and after the sweat lodge ended?

10 **A. I don't know.**

11 **Q.** Is that something that could impact the
12 relevancy of her temperature at the emergency
13 department?

14 **A. If she was cooled, it would be lower, I**
15 **would presume.**

16 **Q.** Were there any signs of dehydration for
17 Ms. Spencer?

18 **A. It was also felt that she appeared to**
19 **have a dry mouth and just looked dry.**

20 **Q.** Did she -- did the doctor in the
21 emergency department note any excess salivation?

22 **A. Not that I'm aware of.**

23 **Q.** And turning your attention -- do you have
24 the exhibit in front of you?

25 **A. Which one?**

1 **Q.** Good question. It would be Exhibit 222.

2 **A. I'm not sure what that is.**

3 **Q.** This one right here. Turning your
4 attention to page No. 2084, do you know whether
5 that indicates whether there is any excessive
6 salivation noted for Ms. Spencer?

7 **A. The ED records indicate there was no**
8 **excessive salivation.**

9 **Q.** The -- that same record, Exhibit 2084.
10 I'll put it up on the ELMO and ask you a question
11 about it.

12 I'm going to ask you to tell us what this
13 means, if you can, in layperson's terms. Going
14 down -- first of all, about halfway down the page
15 it mentioned a differential diagnosis. Can you see
16 that?

17 **A. Yeah.**

18 **Q.** We talked about carbon monoxide. It also
19 indicates a possible opiate overdose. Can you tell
20 us what would lead a doctor to believe there was a
21 possible opiate overdose in this case.

22 **A. Without knowing any of the clinical**
23 **history of the patients that were just found**
24 **unresponsive, the other thing that would be**
25 **consistent with that is pinpoint pupils or small**

1 **pupils.**

2 **Q.** Did Ms. Spencer present with pinpoint
3 pupils?

4 **A. They have them recorded as pinpoint.**
5 **Yes.**

6 **Q.** And is the medical term for pinpoint
7 "miotic"?

8 **A. Yes.**

9 **Q.** So if a record refers to miotic or --
10 it's referring to pinpoint pupils?

11 **A. Yes. "Miotic" would refer to small. And**
12 **pinpoint is very small.**

13 **Q.** Can you tell us what a pinpoint pupil
14 looks like. How can you tell someone has --

15 **A. The eyes are just very constricted with a**
16 **very minimal pupil you can see on examination.**

17 **Q.** And is that a possible indicator, then,
18 of a narcotic drug or opiate overdose?

19 **A. Yes.**

20 **Q.** Under differential diagnosis it also says
21 other metabolic disturbances including significant
22 electrolyte or glucose abnormality.

23 What is that?

24 **A. She's referring to the possibility if the**
25 **patient would have been diabetic, had very low or**

1 Q. Let me spend a little time with you on
2 this concept. When patients come to the hospital,
3 they're going to present with signs and symptoms
4 that you could observe; correct?

5 A. Yes.

6 Q. And sometimes those signs and symptoms
7 could be specifically related to one particular
8 cause. And that would give you an idea of what's
9 occurring with a patient; correct?

10 A. Yes.

11 Q. And sometimes those signs and symptoms
12 could be consistent with more than one causes;
13 correct?

14 A. Yes.

15 Q. And so in differential diagnoses,
16 sometimes you have two or more diseases or
17 disorders that would present with the same signs or
18 symptoms; correct?

19 A. Yes.

20 Q. And so you, as a treating physician, are
21 going to try and, basically, as you said, hone in
22 on a more specific cause; is that right?

23 A. Yes.

24 Q. So based upon that, is it correct to say
25 that there are a number of disorders or diseases

1 that present with signs and symptoms that are very
2 similar?

3 A. Yes.

4 Q. Okay. And so when you have heat stroke
5 or severe heat injury, what are the other possible
6 causes? What is your differential diagnoses there?

7 A. I think one of them is always going to be
8 infections. So a lot of this is just gathering
9 history of what exactly happened and what didn't.
10 If it was someone exposed to a hot area, heat
11 stroke is possibility.

12 If they recently had infection, that's a
13 possibility. We'd wonder about malignancy or other
14 things that could be causing it or just other
15 history of that illness or known malignancies or
16 things of that nature.

17 Q. Okay. Let me try and break that down a
18 little bit more. If somebody comes into the
19 hospital and they present with an elevated
20 temperature, you might think if they've been
21 exposed to heat, that it could be heat illness or
22 heat stroke; correct?

23 A. Yes.

24 Q. But it could also be an infection that
25 you referred to as a "sepsis"?

1 A. Yes.

2 Q. Okay. What are your differential
3 diagnoses when a patient comes in and presents with
4 miosis or miotic, those pinpoint pupils you talked
5 about?

6 A. Oftentimes drug effect. And there is a
7 lot of different drugs that can do that. One thing
8 that's more common is wondering about narcotic
9 overdoses. Particularly, as I mentioned, two
10 things become increasingly confusing as EMS has
11 treated patients and they're getting drugs from
12 them. We might not even be evaluating what their
13 original presentation was.

14 Q. Sure. It's important to understand
15 what's EMS observations were before any treatments
16 were given in the field; correct?

17 A. Right.

18 Q. Now, you mentioned overdose, drug
19 overdose. Are there any other causes that might be
20 concerning to you if you see a patient in the ER
21 with pinpoint pupils?

22 A. I think predominantly drug things.
23 But -- you know -- there is a lot of things that
24 could affect pupil responses. If there was lesions
25 in the brain, or other things can be involved with

1 that also. Even direct things wrong with the eye.
2 So traumas and other things could be
3 involved. There's kind of a lot of possibilities
4 of what could be contributing to it.

5 Q. Sure. Let me add one more sign or
6 symptom if the person is unresponsive. So now you
7 have someone who is unresponsive and they've got
8 pinpoint pupils. What then are your differential
9 diagnoses?

10 A. We've mentioned some of the drug classes.
11 I think you can go through each class, and most
12 every one is going to either dilate them or
13 constrict them. One thing we mentioned was
14 cholinergic could do that, if there was cholinergic
15 drugs on board.

16 There's a lot of drugs that have all kind
17 of effect on these things. So some respects it can
18 be looking things up, talking with toxicology,
19 based on the rest of the presentation, going
20 through it. It is just one factor. It's not that
21 limiting just to know that one piece of
22 information.

23 Q. Sure. I understand that. And so one --
24 and I'm not suggesting that this particular sign or
25 any sign or symptom is going to tell you

1 conclusively what it might be. But if you see a
2 patient with pinpoint pupils, you might start
3 thinking overdose; correct?

4 **A. Yes.**

5 **Q.** You might start thinking ingestion of
6 some sort of chemical or toxin?

7 **A. Yes.**

8 **Q.** Okay. Are you in your practice as a
9 doctor -- and I understand your specialization is
10 in the ICU. You've seen patients that have
11 suffered from heat stroke prior to this incident?

12 **A. Yes.**

13 **Q.** And we'll talk about heat illnesses and
14 the continuum that Mr. Hughes referred to. Have
15 you also treated patients who have come in with
16 signs or symptoms of ingestion of toxins, poisons,
17 overdose of drugs, et cetera?

18 **A. Yes.**

19 **Q.** You had mentioned earlier that when this
20 occurred on October 8, you had limited information;
21 correct?

22 **A. Yes.**

23 **Q.** And that limited information was what you
24 described as hearsay coming from the EMS personnel;
25 is that right?

1 **A. Yes.**

2 **Q.** Okay. So just so the jurors are clear,
3 you didn't speak to anyone who directly came from
4 the scene of the incident; correct? By that I mean
5 a participant or a witness.

6 **A. Not initially. No.**

7 **Q.** Okay. So most of your information came
8 from the folks who responded to try to help the
9 people who were down?

10 **A. Yes.**

11 **Q.** Okay. Would you agree with me that as
12 the treating physician trying to find out what was
13 ailing these people, you would want more
14 information?

15 **A. Yes.**

16 **Q.** More information coming from the scene?

17 **A. Yes. As much as possible. It's helpful
18 to get as much as we can.**

19 **Q.** Okay. And let me ask you. You're here
20 as a witnesses obviously. You're a treating
21 physician, and you've been asked a lot of questions
22 about the possible causes, for example, of
23 Ms. Neuman's death. And I'm going to ask you some
24 more. But I want to make this distinction if you
25 agree with it. You're a treating physician, not a

1 forensic pathologist; correct?

2 **A. Correct.**

3 **Q.** And a forensic pathologist is a medical
4 examiner?

5 **A. Correct.**

6 **Q.** Whose job it is to determine cause and
7 manner of death; is that correct?

8 **A. Yes.**

9 **Q.** And if I understood you earlier, your
10 concern, and as well as the doctors in the ER, your
11 concern as the ICU doctor is to determine the facts
12 so that you can immediately treat the patient and
13 hopefully make them better; correct?

14 **A. Yes.**

15 **Q.** And so one of the things you mentioned is
16 that you don't have the luxury of time, for
17 example, to send things out for screenings or
18 toxicology and labs because there might be a lag;
19 is that correct?

20 **A. Yes. I think we have -- it's fair to say
21 we have to start treating a lot of times before we
22 have all the information.**

23 **Q.** Okay. And sometimes those information or
24 the information that you send out for will come
25 back a few days after you have to deal with

1 emergency situations; correct?

2 **A. Yes.**

3 **Q.** Okay. Are you familiar with eMedicine,
4 by the way?

5 **A. I guess -- well, like TeleMedicine?**

6 **Q.** It's -- I learned this from one of the
7 other doctors in the state's witness list.
8 eMedicine is a website, I suppose, that some
9 doctors, or a lot of doctors, refer to for
10 diagnostic information. Are you familiar with
11 that?

12 **A. I am familiar with it.**

13 **Q.** Okay. And have you as a treating
14 physician consulted with eMedicine?

15 **A. I have not very frequently. No.**

16 **Q.** Okay. Let me start, then, with what
17 happened on this particular day. On October 8,
18 2009, you were on duty at Flagstaff Medical Center
19 when four people presented to your hospital as
20 critically ill; correct?

21 **A. Yes.**

22 **Q.** You mentioned those people. We're going
23 to talk about them a little bit more. Liz Neuman,
24 Tess Wong, Sidney Spencer and Stephen Ray; correct?

25 **A. Yes.**

1 the jury.
 2 Okay?
 3 **A. Okay.**
 4 **Q.** Let's start by talking about heat
 5 illnesses. Mr. Hughes has asked you some questions
 6 about heat and heat stroke. First, with respect to
 7 heat-related illnesses, you told Mr. Hughes that
 8 it's something that exists on a continuum; correct?
 9 **A. Yes.**
 10 **Q.** And so on the one end you have something
 11 as mild as heat exhaustion; correct?
 12 **A. Yes.**
 13 **Q.** And on the extreme end you have something
 14 called "heat stroke"; is that correct?
 15 **A. Yes.**
 16 **Q.** So in the medical profession those two
 17 disorders -- heat exhaustion and heat stroke --
 18 exit on the opposite end of that spectrum; correct?
 19 **A. Yes.**
 20 **Q.** And I think that there are more milder
 21 forms of heat illnesses, like what they call
 22 "prickly heat"?
 23 **A. Correct.**
 24 **Q.** And that's a rash?
 25 **A. Yes.**

1 **Q.** Or heat cramps; correct?
 2 **A. Yes.**
 3 **Q.** Okay. And you said earlier that heat
 4 exhaustion is a milder form. So typically heat
 5 exhaustion is not life threatening; correct?
 6 **A. Correct.**
 7 **Q.** Assuming that you get your temperature
 8 under control?
 9 **A. Correct.**
 10 **Q.** But heat stroke, assuming there aren't
 11 interventions to bring your temperature down, can
 12 be life threatening?
 13 **A. Yes.**
 14 **Q.** Okay. And is it fair to say that when we
 15 look at this continuum where there is heat
 16 exhaustion on the one end and heat stroke on the
 17 other end, as the body temperature increases so
 18 does the severity of the heat injury?
 19 **A. Yes.**
 20 **Q.** Okay. Let me first talk to you about
 21 heat exhaustion. Heat exhaustion in the medical
 22 field is caused by prolonged heat exposure and
 23 sodium depletion and dehydration; correct?
 24 **A. Yes.**
 25 **Q.** And sodium is what's referred to as an

1 "electrolyte"?
 2 **A. Yes.**
 3 **Q.** Okay. You had mentioned earlier a
 4 threshold temperature of 104 degrees Fahrenheit. Do
 5 you recall that?
 6 **A. I don't know that I mentioned the**
 7 **temperature.**
 8 **Q.** Okay. Let me ask you this: What is the
 9 threshold body temperature that defines heat
 10 stroke?
 11 **A. I would say normally, like, 40 degrees**
 12 **Celsius, which is -- I'm not sure exactly what the**
 13 **correlation is.**
 14 **Q.** Okay. Let's assume 40 degrees Celsius is
 15 the same as 104. Is that your medical opinion is
 16 the threshold that breaks all the other heat
 17 illnesses going into heat exhaustion? I'm sorry.
 18 Heat stroke?
 19 **A. I'd say it's generally associated with**
 20 **higher temperatures in that realm, but there is not**
 21 **a clean-cut number that makes a diagnosis or not.**
 22 **Q.** Okay. Typically it's 104, or 40 degrees
 23 celsius?
 24 **A. As a textbook answer to that, that's the**
 25 **general number you would be thinking of that.**

1 **Q.** Okay. With respect to --
 2 THE REPORTER: Excuse me.
 3 **Q.** BY MS. DO: Heat exhaustion is due to
 4 sodium depletion and dehydration. The general
 5 treatment for a patient suffering from heat
 6 exhaustion is to, one, remove them from the hot
 7 environment; correct?
 8 **A. Yes.**
 9 **Q.** And give them oral replacement of either
 10 water or electrolytes?
 11 **A. Correct.**
 12 **Q.** And that's to rehydrate them?
 13 **A. Yes.**
 14 **Q.** So in the milder case, if somebody is out
 15 in the field and they are feeling the effects of
 16 heat exhaustion, something like Gatorade or
 17 electrolyte water could help them; correct?
 18 **A. Yes.**
 19 **Q.** And also removing them from the hot
 20 environment?
 21 **A. Yes.**
 22 **Q.** In the more serious cases of mild -- the
 23 more serious cases of heat exhaustion, you might
 24 have to actually have I.V. fluids; correct?
 25 **A. Yes.**

1 sufficiently. That's one; correct?

2 **A. Yes.**

3 **Q.** And the other thing is sometimes you just

4 don't have it recorded. Is that fair to say?

5 **A. Yeah. I mean, the records come in from a**

6 **lot of places. So even though we have access to**

7 **everything, it's variable how it's recorded.**

8 **Q.** Okay. But that is typically -- if you

9 see somebody who has 104, 105, that's a red flag

10 that you've got something like heat stroke;

11 correct?

12 **A. It's a high temperature. Yeah.**

13 **Q.** And you talked about something called

14 "metabolic acidosis."

15 Your Honor, can we inquire if the jurors

16 are able to see all this?

17 THE COURT: Show of hands of people who are

18 not able to see.

19 There are some people having difficulty.

20 **Q.** BY MS. DO: Metabolic acidosis is where

21 you have too much acid in your body fluids;

22 correct?

23 **A. Yes.**

24 **Q.** You would also have something called --

25 and I think I'm going to have to go to another

1 page.

2 Mr. Hughes talked to you about it. It's

3 called -- how do you say that?

4 **A. Rhabdomyolysis.**

5 **Q.** Okay. Is your microphone on?

6 **A. I don't know.**

7 **Q.** This is, basically, the muscle breakdown;

8 correct?

9 **A. Yes.**

10 **Q.** And you told Mr. Hughes earlier under

11 direct that metabolic acidosis and rhabdomyolysis

12 are not specific to heat stroke; correct?

13 **A. Correct.**

14 **Q.** You can see it in other instances?

15 **A. Yes.**

16 **Q.** You might see something called "elevated

17 creatinine"; is that correct?

18 **A. Yes.**

19 **Q.** Can you tell the jury what creatinine is.

20 **A. Creatinine is related to the**

21 **rhabdomyolysis where it's a muscle product. So**

22 **there's a breakdown of muscle, it's an elevated**

23 **blood test.**

24 **Q.** Okay. In all three of these things you

25 can see in other --

1 **A. Creatinine is the -- sorry. I misspoke.**

2 **That's a renal function specifically.**

3 **Q.** Okay. So that's why you have sometimes

4 acute renal failure; right?

5 **A. Yes. Creatinine refers to renal**

6 **function.**

7 **Q.** Okay. The last page.

8 You talked about something called

9 "disseminated" --

10 **A. Intravascular coagulation.**

11 **Q.** That's also known as DIC?

12 **A. Yes.**

13 **Q.** Could you explain to the jury what that

14 is.

15 **A. It's called a "coagulopathy," which**

16 **refers to -- there is a disruption in the normal**

17 **clotting factors in the blood. And it kind of**

18 **predisposes to uncontrolled bleeding or spontaneous**

19 **bleeding. It's something that tends to be affected**

20 **by temperature but can be associated with other**

21 **illnesses as well.**

22 **Q.** And you would see DIC in a lot of

23 critically ill patients; correct?

24 **A. It's not a common thing to see. Heat**

25 **stroke is one, but we do see it with septic shock**

1 **and infection and cancer too.**

2 **Q.** Okay. And you talked about something

3 called "tachycardia," which is fast heart rate;

4 correct?

5 **A. Yes.**

6 **Q.** And in heat stroke you're typically going

7 to see blood pressure in the normal to low range;

8 is that correct?

9 **A. Yes. With dehydration you expect it to**

10 **be low.**

11 **Q.** Okay. But normal to low; correct?

12 **A. Yes.**

13 **Q.** You're also going to see typically normal

14 or dilated pupils; correct?

15 **A. Yes. I'd say.**

16 **Q.** Okay. Can you tell the jury -- maybe

17 they already know -- just so we're clear what

18 "dilated" means.

19 **A. Just enlarged.**

20 **Q.** Okay. So normal is like you now.

21 Dilated is big?

22 **A. Yeah.**

23 **Q.** And sometimes you're going to see

24 respiratory failure; correct?

25 **A. Yes.**

1 Q. Respiratory failure, like coma, is also a
2 late-stage finding?
3 A. Yes.
4 Q. Something you would expect to see further
5 down in the end of the process than something
6 earlier on?
7 A. Yes.
8 Q. Okay. I'm going to switch gears and talk
9 to you about another medical condition. I'm going
10 to talk to you about pesticide poisoning. Have you
11 had any experience with that in your training or
12 medical profession?
13 A. I'm aware of it. I haven't seen cases
14 that I can recall.
15 Q. Okay. This is something you would have
16 studied in medical school?
17 A. Yes.
18 Q. And something that you would have, I'm
19 presuming, in continuing education?
20 A. Yes.
21 Q. Okay. You talked about miosis, or
22 pinpoint pupils. Miosis and/or pinpoint pupils is
23 something you would typically see -- I think I
24 heard you earlier say you don't like to use the
25 word "toxidrome"?

1 A. It's not something I use frequently.
2 Q. Okay. That's fine. Some of your
3 colleagues do, though; correct?
4 A. Yes.
5 Q. And could you tell the jury what a
6 toxidrome is.
7 A. I guess I would just say a toxic exposure
8 or substance. It could be either oral or
9 aerosolized or a lot of different ways. It's
10 something that's caused a systemic response, I
11 guess.
12 Q. Okay. So it's, basically -- if I
13 understand it correct, a toxidrome is like a
14 constellation, a pattern, of signs and symptoms
15 that indicate to you that somebody might have
16 ingested a toxin. And those signs and symptoms
17 could be specific to a particular toxin?
18 A. Correct.
19 Q. And we're going to go through the medical
20 records and talk about the patients you saw. But
21 all four of them presented with pinpoint pupils;
22 correct?
23 A. Yes.
24 Q. And that pinpoint pupils was the red flag
25 to you and the other doctors that something you

1 should look at as a possible toxin ingestion;
2 correct?
3 MS. DO: Your Honor, it's 12:00. Should we
4 break now?
5 THE COURT: Yes.
6 We need to do that, ladies and gentlemen.
7 Please be reassembled at 1:15. Take a bit of a
8 short break today. 1:15. And we'll start as soon
9 as we can after that.
10 Again, remember the admonition. We'll be
11 in recess. Thank you.
12 (Recess.)
13 THE COURT: The record will show the presence
14 of the defendant, Mr. Ray; the attorneys, the jury.
15 The witness, Dr. Cutshall, is on the stand.
16 Ms. Do, you may continue.
17 MS. DO: Thank you, Your Honor.
18 Q. Good afternoon, Doctor. Before we broke
19 for lunch, we were talking about pupils, dilated
20 and pinpoint. And so that we are on the same
21 page -- so dilated pupils, you said, were large;
22 correct?
23 A. Yes.
24 Q. And pinpoint is small and constricted?
25 A. Yes.

1 Q. Okay. So let me see if I can draw this.
2 That's an eye. And this would be called the
3 "iris"; right?
4 A. The iris. Yes.
5 Q. And then the pupils are in the iris. And
6 so pinpoint is like that; correct?
7 A. Yes.
8 Q. And then dilated --
9 Let me have you draw it, if you can. How
10 big would the pupils be if they were dilated? I
11 realize it's not to scale obviously.
12 So almost taking up the full space of the
13 iris; correct?
14 A. Yes.
15 Q. So there is no mistaking between the two?
16 A. Correct.
17 Q. That evening on October 8, 2009, all four
18 of your patients came in with pinpoint pupils, as
19 we see there?
20 A. Yes.
21 Q. And before we broke for lunch, you said
22 that the pinpoint pupils were a red flag to you and
23 the other doctors that you might possibly be
24 dealing with a toxin or an ingestion of a toxin;
25 correct?

1 **A. Yes.**
 2 **Q.** We also talked about the word
 3 "toxidrome." And you explained that. And I
 4 understand it's not a word that you like to use. I
 5 think you used the word "syndrome." Is that
 6 correct?
 7 **A. Toxidrome is fine.**
 8 **Q.** Okay. I just don't want to use a word
 9 that you're not comfortable with. Toxidrome is,
 10 essentially, a pattern of signs and symptoms of a
 11 particular toxin; correct?
 12 **A. Yes.**
 13 **Q.** And, if I understand correctly, there are
 14 six basic toxidromes, to your knowledge. Correct?
 15 **A. I guess I don't know of that**
 16 **classification. But I don't know if that's**
 17 **incorrect either.**
 18 **Q.** Let's go through them and make sure that
 19 we are on the same page. We've heard two so far on
 20 your direct testimony. You talked about one called
 21 an "anticholinergic"?
 22 **A. Right.**
 23 **Q.** Let me write that word so we all have the
 24 same spelling.
 25 Did I spell that right?

1 **A. Yes.**
 2 **Q.** And the other one is called a
 3 "cholinergic"; correct?
 4 **A. Correct.**
 5 **Q.** The other types of toxidromes that you
 6 might come into -- encounter is called
 7 "hallucinogenic" is one; correct?
 8 **A. Yes.**
 9 **Q.** Another one might be an opiate toxidrome?
 10 **A. Yes.**
 11 **Q.** Another one might be a sedative or
 12 hypnotic type of toxidrome?
 13 **A. Yes.**
 14 **Q.** And the last one -- and I'm sure I'm
 15 going to say this wrong. Sympathomimetic?
 16 **A. Yeah. That's correct.**
 17 **Q.** So did I get all six of the basic
 18 toxidromes?
 19 **A. Yes.**
 20 **Q.** Now, I want to talk about the two that
 21 have come up under your direct testimony. The
 22 anticholinergic toxidrome. I understand there is a
 23 phrase they teach in medical school to remember the
 24 signs and symptoms of that particular toxidrome.
 25 Do you know what I'm talking about?

1 **A. Oh, it includes mad as a hatter and all**
 2 **these different things I don't remember.**
 3 **Q.** Let me see if I got it right. Is it hot
 4 as a hair? Dry as a bone? Red as a beet? Mad as
 5 a hatter? Blind as a bat?
 6 **A. Sounds right.**
 7 **Q.** Okay. And that's what they teach you to
 8 remember the signs and symptoms that would be a red
 9 flag that you're dealing with an anticholinergic
 10 toxidrome?
 11 **A. Yes.**
 12 **Q.** Okay. So with that particular toxidrome,
 13 the first tell-tail sign is that you have a dilated
 14 pupil; correct?
 15 **A. That's right.**
 16 **Q.** And it's the opposite of miosis? And I
 17 think the word is "mydriasis"?
 18 **A. Mydriasis.**
 19 **Q.** There you go. So if you see dilated
 20 pupils, you're going to think anticholinergic; is
 21 that correct?
 22 **A. Dilated could be cholinergic. No.**
 23 **Anticholinergic. You're correct. Yes. Sorry.**
 24 **Q.** That's okay. And another sign that you
 25 might see, and this, I think, is under mad as a

1 hatter, is an altered mental status; correct?
 2 **A. Yes.**
 3 **Q.** That could include from delirium to coma?
 4 **A. Correct.**
 5 **Q.** You might even see seizures?
 6 **A. Yes.**
 7 **Q.** And dry as a bone means you would see dry
 8 skin?
 9 **A. And just dry mucosa if you took a look in**
 10 **the mouth.**
 11 **Q.** Okay. And you would also see rapid
 12 heartbeat; correct?
 13 **A. Yes.**
 14 **Q.** That's what you called "tachycardia"?
 15 **A. Yes.**
 16 **Q.** And what are the causes of that
 17 particular toxidrome, if you know?
 18 **A. It's anticholinergic drugs. I don't have**
 19 **a list off the top of my head. It's usually an**
 20 **ingestion of a drug that has an anticholinergic**
 21 **effect.**
 22 **Q.** Okay. Is one of what you refer to -- and
 23 we'll get to it -- in the medical records of Liz
 24 Neuman, "datura" or "jimson weed"?
 25 **A. We mentioned that as a possibility. At**

- 1 that point, again, we were just speculating on what
2 might be contributing.
- 3 Q. Sure. And we'll get to that. I just
4 want to understand what the causes are of an
5 anticholinergic toxidrome. Could include something
6 like jimson weed?
- 7 A. I'm not positive about jimson weed. That
8 was mentioned in the initial history.
- 9 Q. Okay. What about antihistamines?
- 10 A. They do have anticholinergic effects as
11 well.
- 12 Q. Atropine?
- 13 A. Atropine would be the opposite.
- 14 Q. But what distinguishes between
15 anticholinergic and cholinergic are the eyes;
16 correct?
- 17 A. Yes. They're opposite.
- 18 Q. Okay. So now let's talk about
19 cholinergic. Pinpoint pupils; yes?
- 20 A. Yes.
- 21 Q. And I also understand that in medical
22 school they teach you a mnemonic to remember the
23 signs and symptoms of this particular toxidrome.
24 And it's "SLUDGE" right?
- 25 A. Yes.

- 1 Q. Do you remember that?
- 2 A. I don't remember all of them.
- 3 Q. It's "SLUDGE" and something else called
4 the "killer bees"? You remember that?
- 5 A. It's, basically, all the opposite of the
6 bradycardia.
- 7 Q. Say that again.
- 8 A. It's the opposite of the anticholinergic.
- 9 Q. If you don't mind if we can talk through
10 the signs and symptoms for a cholinergic toxidrome.
11 The killer bees refer to bronchorrhea and
12 bronchospasm, as I understand it. Is that correct?
- 13 A. Yes.
- 14 Q. And bronchorrhea. If you could tell the
15 jury what that is, please.
- 16 A. It's just airway secretion, increased
17 airway secretions.
- 18 Q. And what kinds of things would you see
19 with that airway secretion?
- 20 A. Potentially kind of a gurgling with
21 breathing, stuff like that.
- 22 Q. So, like, a watery, gurgling sound coming
23 up in the breathing?
- 24 A. Yes.
- 25 Q. What about frothy sputum?

- 1 A. It would be -- similar kind of thing.
- 2 That same kind of sputum in the airway probably.
- 3 Q. Okay. So if I understand, bronchorrhea
4 is excessive secretions from the bronchial mucosa
5 of the lungs?
- 6 A. Yes.
- 7 Q. Resulting in copious production of either
8 thin or frothy sputum? Is that correct?
- 9 A. Yes.
- 10 Q. So a layperson might see it as foaming?
- 11 A. Yes.
- 12 Q. Bronchospasm. Could you tell the jury
13 what that is.
- 14 A. It's just constriction of the airways.
- 15 It would be bronchospasm seen with asthma. If you
16 hear wheezing and stuff like that, it's
17 bronchospasm.
- 18 Q. Okay. And as I understand, this
19 particular toxidrome is referred to as the "killer
20 bees" with bronchospasm because you have severe
21 respiratory distress?
- 22 A. Yes.
- 23 Q. Respiratory failure?
- 24 A. You can. Yes.
- 25 Q. So in addition to the killer bees and

- 1 miosis, you would also have altered mental status?
- 2 A. You could. Yes.
- 3 Q. And we talked about SLUDGE, the mnemonic,
4 S-L-U-D-G-E. Does "S" stands for salivation.
- 5 A. Yes.
- 6 Q. Lacrimation for the "L"?
- 7 A. Yes.
- 8 Q. Could you tell the jury what lacrimation
9 is.
- 10 A. Tearing.
- 11 Q. So excessive tearing; correct?
- 12 A. Yes.
- 13 Q. And "U" stands for urination?
- 14 A. Yes.
- 15 Q. And "D" stands for diaphoresis?
- 16 A. Yes.
- 17 Q. Which is sweating?
- 18 A. Yes.
- 19 Q. The "G" stands for GI distress, the
20 gastrointestinal area?
- 21 A. Yes.
- 22 Q. And the "E" emesis, e-m-e-s-i-s?
- 23 A. Yes.
- 24 Q. And that's?
- 25 A. Vomiting.

- 1 Q. But if it isn't, you would have
2 tachycardia?
- 3 A. **Yes. But if it's nicotinic, you could**
4 **have tachycardia.**
- 5 Q. So I just want to be sure we're speaking
6 the same language and the jury understands it.
7 When you have an OP poisoning, the fact that there
8 is no bradycardia doesn't mean that's not what's
9 going on. It just means the OP is interacting more
10 with the other receptors. Is that correct?
- 11 A. **Yes. I guess it's hard to say for**
12 **sure -- if there is a nicotinic and muscarinic**
13 **response, it can affect both. And they're**
14 **opposite.**
- 15 Q. Okay. So you can see either/or?
- 16 A. **Yes.**
- 17 Q. Okay. With respect to the blood
18 pressure, we already talked about heat stroke. You
19 would see normal to low, but in the case of OP
20 poisoning you would actually see normal to high;
21 correct?
- 22 A. **For blood pressure?**
- 23 Q. Yes.
- 24 A. **Again, it would probably make some**
25 **difference on whether it's muscarinic or nicotinic.**

- 1 **But yes.**
- 2 Q. Okay. You're going to see more normal to
3 high? I don't want to put words in your mouth. I
4 want to make sure we got this right.
- 5 A. **Normal to high would be with a nicotinic**
6 **receptor. A muscarinic receptor, if he had**
7 **bradycardia, it would be doing the opposite.**
- 8 Q. Okay.
- 9 A. **So it would be normal to low, potentially**
10 **low, with bradycardia.**
- 11 Q. Okay. And then with respect to the
12 pupils -- we talked about this already -- you're
13 going to see pinpoint pupils; correct?
- 14 A. **Yes.**
- 15 Q. You're also going to see respiratory
16 failure in a case of OP poisoning because of the
17 killer bees that we talked about; correct?
- 18 A. **You can see that. Yes.**
- 19 Q. And bronchorrhea and bronchospasm;
20 correct?
- 21 A. **Yes.**
- 22 Q. And under that you're going to see things
23 like frothy sputum; correct?
- 24 A. **Yes.**
- 25 Q. Which a layperson would know as foaming?

- 1 A. **Yes.**
- 2 Q. You're going to see excessive salivation;
3 correct?
- 4 A. **Yes.**
- 5 Q. You're going to see cool or clammy skin;
6 correct?
- 7 A. **Yes.**
- 8 Q. Okay. Would you agree with me, Doctor,
9 that the signs and symptoms of heat stress
10 oftentimes mimic the signs and symptoms of a
11 cholinergic toxidrome?
- 12 A. **Some of them. Yes.**
- 13 Q. Okay. And are you familiar with, for
14 example, because it mimics some of them, some of
15 the ones we've gone through, farm workers, for
16 example, are exposed to both heat and pesticides.
17 Are you familiar with whether or not they
18 are and people who work with them are warned that
19 sometimes pesticides can mimic heat stress and heat
20 stress can sometimes mimic pesticides?
- 21 A. **I think it would complicate things if you**
22 **were working with pesticides.**
- 23 Q. Say that one more time.
- 24 A. **It would complicate things if you were**
25 **working with pesticides in the heat.**

- 1 Q. Why would it complicate things?
- 2 A. **Because there is two factors. And there**
3 **is some overlapping symptoms.**
- 4 Q. Okay. So there is symptoms that mirror
5 each other; correct?
- 6 A. **Yes.**
- 7 Q. And they can oftentimes be confusing and
8 challenging to sort out; correct?
- 9 A. **Yes.**
- 10 Q. We had talked about very early on how you
11 had limited information when all these folks came
12 in critically ill. And that information was
13 hearsay that you got from the EMS folks who had
14 gone out to the scene; correct?
- 15 A. **Yes.**
- 16 Q. And you had -- I think, common sense told
17 the jury that more information would have been
18 helpful to you; correct?
- 19 A. **Yes.**
- 20 Q. During the nine days that you had cared
21 for Liz Neuman, from October 8 to the 17th, did
22 anyone from the Yavapai County Sheriff's Office
23 contact you to offer you information that they
24 might have learned in their investigation?
- 25 A. **No.**

- 1 Q. Let's talk about that for just a second.
 2 If you could turn to Exhibit 365. And I'm going to
 3 ask you to look at your Bates stamp 2841.
 4 A. I'm not understanding this numbering
 5 system on these.
 6 Q. Let me help you. Doctor, we're referring
 7 to the number on the bottom right-hand corner. The
 8 page we're looking at now is the results or the
 9 results from that lab work that we're talking
 10 about; correct?
 11 A. Yes.
 12 Q. And, again, the records are so small, but
 13 let me see if I can zero in. The time that we're
 14 looking at is October 8, 2009, at 1700 hours;
 15 correct?
 16 A. Yes.
 17 Q. I'm sorry. 1900, which is 7:00 p.m.;
 18 correct?
 19 A. Correct.
 20 Q. And that number we see here, the 137,
 21 refers to her sodium level; correct?
 22 A. Correct.
 23 Q. And her sodium level was completely
 24 normal; correct?
 25 A. Correct.

- 1 Q. And then I won't zero in on the rest of
 2 the document there. But on this page, Bates
 3 stamped 2841, her chloride was 102; correct?
 4 Totally normal?
 5 A. Correct.
 6 Q. Her BUN, her blood urea nitrogen, is 15;
 7 correct?
 8 A. I'm not seeing.
 9 Q. Let me see if I can help you here. The
 10 last column here is BUN, blood urea nitrogen;
 11 correct? Up here?
 12 A. Are you referring just to the bottom one?
 13 Q. Yes. So at 7:00 p.m. her blood urea
 14 nitrogen was 15; correct?
 15 A. Yes.
 16 Q. Completely normal?
 17 A. Yes.
 18 Q. And so looking at the sodium chloride,
 19 BUN, that's typically what's called a "dehydration
 20 profile"; correct?
 21 A. Yes.
 22 Q. And Ms. Neuman's profile based on
 23 chemistry showed she was not dehydrated; correct?
 24 A. Not necessarily.
 25 Q. I understand.

- 1 A. It's not as straightforward to say there
 2 is a normal, because there is a equilibration of
 3 fluid shifts that happen. So someone can be
 4 dehydrated with totally normal numbers. That
 5 doesn't mean they weren't dehydrated.
 6 Q. Let me try to unpack it so we understand.
 7 These particular numbers show, at least
 8 diagnostically, that she doesn't have a dehydration
 9 profile?
 10 A. It's a normal profile.
 11 Q. It's a normal profile. So what you're
 12 saying is there are, and we talked about this, the
 13 multifactorial?
 14 A. Yeah.
 15 Q. There are things before that that you
 16 just don't know that could have affected her
 17 numbers here; correct?
 18 A. Yes. But I also say it's -- lots of
 19 times it's not -- I wouldn't call "dehydration" a
 20 laboratory diagnosis. I called it a clinical
 21 diagnosis.
 22 Q. Okay. I'm sorry. We'll use -- what does
 23 that mean?
 24 A. The fact that somebody has a low blood
 25 pressure and tachycardia would suggest volume under

- 1 load. I mean that they were dehydrated and
 2 hypovolemic. And it would trump these numbers to
 3 me.
 4 Q. Got it. And hypovolemic is?
 5 A. Just low volume associated with
 6 dehydration.
 7 Q. Low volume of --
 8 A. You're seeing -- it can potentially mean
 9 that. There are other -- you're mentioning
 10 organophosphates. That can raise heart rate as
 11 well. But you can -- you know -- that's suggesting
 12 a volume depletion picture. And you would expect a
 13 normal heart rate, a normal blood pressure, if you
 14 had normal blood volume and weren't dehydrated.
 15 Q. Okay. We'll talk about the blood
 16 pressure. But for now I want to make sure we're on
 17 the same page with regards to these particular
 18 markers. These are all markers that doctors and
 19 physicians will look at to see if there is clinical
 20 dehydration?
 21 A. I would say all those markers are normal.
 22 But it doesn't clearly indicate the normal fluid
 23 status.
 24 Q. Got it. At 7:00 p.m. what was
 25 Ms. Neuman's UA specific gravity? Normal or not?

1 **A. Where is that?**
 2 **Q.** It's at your Bates stamp 2863.
 3 **A. 1.004.**
 4 **Q.** Within the normal range; correct?
 5 **A. Correct.**
 6 **Q.** And Mr. Hughes has already clarified or
 7 cleared up under direct that you may have gotten
 8 hearsay -- by "you" I mean the doctors or the
 9 nurses had gotten hearsay information that
 10 Ms. Neuman had been fasting. And that turned out
 11 to be incorrect; correct?
 12 **A. Yes.**
 13 **Q.** Okay. Let's talk about her pinpoint
 14 pupils. Looking at Exhibit 365, Doctor, and that
 15 would be your Bates stamp 314. I'm sorry. Excuse
 16 me. 2597. Let me know when you're there.
 17 **A. Okay.**
 18 **Q.** This page, 2597, is the run sheet from
 19 Verde Valley Fire District; correct?
 20 **A. Yes.**
 21 **Q.** And so this would be whatever information
 22 was taken by the paramedics or EMS services from
 23 Verde Valley Fire District; correct?
 24 **A. Yes.**
 25 **Q.** And you will note on the left-hand corner

1 a time of 5155 -- I'm sorry. That's a colon.
 2 5:55 p.m.; correct?
 3 **A. Yes.**
 4 **Q.** And what was noted about her pupils at
 5 5:55 p.m.?
 6 **A. Two millimeter pupils that were**
 7 **nonreactive.**
 8 **Q.** Okay. And those are the pinpoint pupils
 9 we talked about; right?
 10 **A. Yes.**
 11 **Q.** Now, Mr. Hughes suggested earlier that
 12 Narcan was given to Ms. Neuman that might have
 13 affected the size of her pupils. Do you remember
 14 that?
 15 **A. Yes. It would potentially affect it.**
 16 **Q.** Do you know what time Ms. Neuman received
 17 Narcan?
 18 **A. I do not.**
 19 **Q.** So you don't know whether it was before
 20 or after this particular paramedic at 5:45 p.m.
 21 noted that they were two millimeters?
 22 **A. He had the time, I think, on the one. I**
 23 **don't remember what that was.**
 24 **Q.** Okay. Why don't we take a look at
 25 Exhibit 369. Do you have that in front of you,

1 sir?
 2 **A. What number is that?**
 3 **Q.** Exhibit 369.
 4 **A. Is that one of these other two-five**
 5 **numbers or not?**
 6 **Q.** I'm sorry. I may have misspoken. Give
 7 me one second.
 8 Let me do this: I believe earlier when
 9 Mr. Hughes was asking you and he was looking at the
 10 record, you agreed with him that she received
 11 Narcan at 1845. Do you recall that?
 12 **A. Yes.**
 13 **Q.** And that would be 6:45; correct?
 14 **A. Yes.**
 15 **Q.** That would be after the paramedic
 16 responded and saw her eyes at the two millimeters;
 17 correct?
 18 **A. Yes.**
 19 **Q.** So if she received the Narcan after he
 20 observed her pupils to be pinpoint, the Narcan
 21 isn't relevant for our purposes here; correct?
 22 **A. Unless the Narcan corrected it then**
 23 **would be the question. The Narcan is used just**
 24 **empirically to see if there is an effect. So if**
 25 **the pupils would have enlarged after that. But**

1 **there was no response, from what he said.**
 2 **Q.** Okay. I think I understand you. But I
 3 want to make sure we're clear on it. Her pinpoint
 4 pupils were to be two millimeters at 5:55 p.m.;
 5 correct?
 6 **A. Yes.**
 7 **Q.** The Narcan was given to her at what time?
 8 **A. There was no effect from that dose of**
 9 **Narcan.**
 10 **Q.** There we go. And, to your knowledge, did
 11 she get Narcan before the 6:45 p.m. dose?
 12 **A. Not to my knowledge.**
 13 **Q.** Okay. So if she did not receive Narcan
 14 before 6:45, then the 2 millimeters that the
 15 paramedics observed is a 2 millimeter; correct?
 16 **A. Yes.**
 17 **Q.** All right. Now, we had talked about how
 18 the pinpoint pupils, not only Ms. Neuman but all
 19 the other critically ill patients, were a red flag
 20 to you and the doctors that you might be dealing
 21 with a toxidrome; correct?
 22 **A. Yes.**
 23 **Q.** I want to now move into the specific
 24 evaluation of Ms. Neuman once you received her.
 25 She came into the ER; correct?

1 **A. Yes.**
2 **Q.** And according to normal protocol, she
3 would have been seen by an ER doctor?
4 **A. Yes.**
5 **Q.** And the ER doctor in this instance was
6 Dr. Mark Peterson?
7 **A. Yes.**
8 **Q.** After Dr. Mark Peterson evaluated her and
9 determined she was a critically ill patient, she
10 then was turned over to your care?
11 **A. Yes.**
12 **Q.** And transferred to the ICU?
13 **A. Correct.**
14 **Q.** And, again, you would have had access to
15 whatever information that Dr. Peterson had
16 observed; correct?
17 **A. It would have been all written. It's not**
18 **on the computer chart. So we'd have access to a**
19 **handful of papers that ended up on the table next**
20 **to the critically ill person. Sometimes there is**
21 **things that kind of end up in the chart later. We**
22 **do have access to whatever is available. I would**
23 **say that.**
24 **Q.** And was Dr. Mark Peterson one of the
25 doctors that you spoke of earlier where sort of the

1 doctors at Flagstaff medical were collaborating and
2 trying to figure out the puzzle?
3 **A. Yes.**
4 **Q.** So I'd ask you now to turn to Dr. Mark
5 Peterson's ER evaluation and -- in Exhibit 366.
6 **A. Okay.**
7 **Q.** And I'll refer you to Bates stamp 3026.
8 Are we on the same page, Doctor?
9 **A. Okay.**
10 **Q.** The ER evaluation is something that
11 Dr. Peterson would have drafted; and it would
12 contain all of the information that he saw or
13 observed when Ms. Neuman presented the ER at
14 6:46 p.m.; correct?
15 **A. Yes.**
16 **Q.** So looking at the page, your Bates stamp
17 3026, Dr. Peterson is referring to an exam that he
18 conducted on October 8, 2009; correct?
19 **A. Yes.**
20 **Q.** And the time on that is 6:46 is the
21 triage time; is that correct?
22 **A. Yes.**
23 **Q.** And under the history or the history of
24 the present illness, Dr. Peterson -- and you would
25 agree with me that Dr. Peterson would have been the

1 first eyes on Ms. Neuman at Flagstaff by a doctor;
2 correct?
3 **A. The first physician. Yes.**
4 **Q.** I want to focus in on this. I'm not sure
5 Mr. Hughes showed you this. Dr. Peterson, who put
6 his eyes on Ms. Neuman and seeing all the signs and
7 symptoms that he observed wrote, it is suspected
8 that she has had some sort of toxidrome/ingestion
9 but otherwise this is not known; is that correct?
10 **A. Yes.**
11 **Q.** Now, you all had understood, based upon
12 the hearsay information, that these patients came
13 from a heated environment; correct?
14 **A. Yes.**
15 **Q.** A sweat lodge ceremony?
16 **A. Yes.**
17 **Q.** But you didn't presume just from that
18 mere fact that you were dealing with heat stroke;
19 correct?
20 **A. We were considering heat stroke the same**
21 **way we were considering a toxidrome syndrome.**
22 **Q.** What I'm asking, as a doctor, as a
23 medical physician, you're not going to presume from
24 one circumstantial fact that this is what caused
25 it? You're going to look at more information?

1 **A. Correct.**
2 **Q.** And based on the signs and symptoms,
3 including the pinpoint pupils, Dr. Peterson
4 suspected she had some sort of toxidrome or
5 ingestion; correct?
6 **A. Yes.**
7 **Q.** We talked about blood pressure. Blood
8 pressure that you would expect to see in the case
9 of heat stroke would be normal to low; correct?
10 **A. Yes.**
11 **Q.** And would be normal to high in a
12 toxidrome; correct?
13 **A. Yes.**
14 **Q.** Looking at the second page of
15 Dr. Peterson's report, what did Dr. Peterson note
16 was her blood pressure upon presentation to the ER?
17 **A. 204 over 79.**
18 **Q.** Is that high or low, Doctor?
19 **A. It's high.**
20 **Q.** Is it mildly high or very high?
21 **A. It's very high. Those are also numbers**
22 **that we commonly see in people that are intubated**
23 **that are coming off a paralytic.**
24 **Q.** Do you know if she was --
25 **A. The problem with all these questions is**

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1 Indicated what his working diagnoses were; correct?

2 A. Yes.

3 Q. One is acute altered mental status;

4 correct?

5 A. Yes.

6 Q. Acute renal insufficiency; correct?

7 A. Yes.

8 Q. Metabolic acidosis?

9 A. Yes.

10 Q. As we already talked, those three things

11 are nonspecific to heat stroke and can be

12 consistent with a toxidrome or with heat stress;

13 correct?

14 A. Yes.

15 Q. And Dr. Peterson, upon seeing the signs

16 and symptoms, said, consider heat stroke,

17 heart-related injury; correct?

18 A. Yes.

19 Q. And also consider toxidrome of

20 anticholinergic ingestion; correct?

21 A. Yes.

22 Q. And this goes back to what we talked

23 about earlier, the differential diagnosis; correct?

24 A. Yes.

25 Q. Where you see a pattern of signs and

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1 symptoms that could suggest one cause or another

2 where they mirror each other. That's what this is;

3 correct?

4 A. Yes.

5 Q. Now, because we already know that Liz

6 Neuman had pinpoint pupils -- and perhaps this was

7 a dictation issue -- it would be more accurate to

8 say toxidrome of a cholinergic ingestion; correct?

9 On the pupils. I understand there are other

10 factors.

11 A. Yeah. On the pupils.

12 Q. Because in an anticholinergic you have

13 dilated ones; correct?

14 A. Yes.

15 Q. Okay. Now, after Dr. Peterson saw her in

16 the ER, she then turned to your care in the ICU?

17 A. Yes.

18 Q. Is that correct? Let me have you turn to

19 your records, then, Doctor. And it's Exhibit 366.

20 You wrote up what's called a "critical care

21 evaluation"?

22 A. Yes.

23 Q. And I'll ask you to turn to that

24 evaluation. And it's going to be at your Bates

25 stamp 003014.

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1 A. Okay.

2 Q. And the time of your evaluation is noted

3 at the top; correct?

4 A. Yes.

5 Q. And that would be at 2225, which is

6 10:25?

7 A. Correct.

8 Q. And at 10:25 you still noted she had

9 pinpoint pupils; correct?

10 A. Yes.

11 Q. You noted that she appeared to be dry

12 with red eyes; correct?

13 A. Yes.

14 Q. Now, when you say, "dry with red eyes,"

15 what does the "dry" refer to?

16 A. Just all the appearance of the vitreous

17 of the eyes.

18 Q. It's specific to the eyes; is that right?

19 A. Yes.

20 Q. You're not referring to the skin?

21 A. Correct.

22 Q. You also noted that she was tachycardic;

23 correct?

24 A. Yes.

25 Q. And based upon that presentation, you

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1 also noted in your evaluation consistent with a

2 possible anticholinergic syndrome; correct?

3 A. Yes.

4 Q. And, again, at this time you were aware

5 that she came from a heated environment; correct?

6 A. Yes.

7 Q. And nobody when she presented to the ER

8 put her in an ice bath; correct?

9 A. Correct.

10 Q. The cooling measures we talked about, the

11 ice pack to the groin -- none of that happened;

12 correct?

13 A. Actually, I don't recall for sure.

14 Q. Okay. Fair enough. You did give

15 something called a "charcoal lavage"; is that

16 correct?

17 A. Yes.

18 Q. And that's --

19 A. That was done in the emergency room. Not

20 by me. That was given before I'd seen her.

21 Q. Okay. Thank you for that clarification.

22 And charcoal lavage. Can you tell the jury what

23 that is and what it's used for.

24 A. Specifically if there's a medical --

25 medication ingestion, it will bind up a lot of

1 **drugs and try to prevent further absorption. So if**
 2 **this would have been a big antihistamine ingestion**
 3 **or something like that, it can bind things up in**
 4 **the stomach, prevent it from getting worse. So**
 5 **it's an actual -- it's a charcoal component that's**
 6 **given directly into stomach through a tube.**

7 **Q.** So if I understand correctly, first of
 8 all, this was done in the ER; is that right?

9 **A. Yes.**

10 **Q.** And it's an emergency decontaminant?

11 **A. Yes.**

12 **Q.** And, basically, what it does is it goes
 13 into your GI system, your stomach, or your
 14 intestinals, and it reduces the absorption rate of
 15 whatever is going on; correct?

16 **A. Yes.**

17 **Q.** And in this case she was given a charcoal
 18 lavage because you and Dr. Peterson or Dr. Peterson
 19 had suspected a toxidrome; correct?

20 **A. Yes.**

21 **Q.** And that is an acute ingestion or
 22 exposure to a toxin; correct?

23 **A. Yes.**

24 **Q.** And so when she presented at 6:46 in the
 25 ER and the doctor puts his eyes on her, the first

1 thing he does with her is give her a charcoal
 2 lavage, which is a treatment of a poison; correct?

3 **A. Yes. Correct.**

4 **Q.** After you noted all of these various
 5 signs and symptoms, and, again, even on your
 6 observation she had pinpoint pupils; is that right?

7 **A. Yes.**

8 **Q.** She still had a rectal temperature of
 9 38.7 degrees Celsius?

10 **A. Correct.**

11 **Q.** Which is still 101 Farenheit; correct?

12 **A. Yes.**

13 **Q.** And you knew from the lab workup at
 14 7:00 p.m. that she showed normal markers for
 15 dehydration; correct?

16 **A. Normal electrolytes. Yes.**

17 **Q.** Normal electrolytes. Thank you. And
 18 then you indicated at the end of your evaluation --
 19 if I could direct your attention to Bates stamp
 20 3016. At the top, as you told Mr. Hughes, ABG,
 21 arterial blood gas -- you did that and it showed no
 22 sign of carbon monoxide poisoning; correct?

23 **A. Correct.**

24 **Q.** And so that was ruled out?

25 **A. Yes.**

1 **Q.** You indicated in paragraph 2 -- you
 2 talked about a creatinine of 1.7?

3 **A. Yes.**

4 **Q.** And we talked about that earlier. That's
 5 a marker of the renal function; right?

6 **A. Yes.**

7 **Q.** Kidney function. And you then wrote here
 8 based upon that elevated creatinine -- first of
 9 all, is that a significantly elevated creatinine or
 10 mildly elevated?

11 **A. Normal level is 1. It's significant in**
 12 **someone who's presenting acutely ill because it's**
 13 **potentially rapidly increasing. So it's an initial**
 14 **value that may get considerably worse by the time**
 15 **you do a repeat.**

16 **Q.** Okay.

17 **A. So it's above normal, and it's something**
 18 **of concern in someone coming in ill like this.**

19 **Q.** And she did show signs of acute renal
 20 failure; correct?

21 **A. That test specifically at the beginning**
 22 **was one. Yes.**

23 **Q.** Okay. You indicated in your discussion
 24 of acute renal failure that it is likely, it is
 25 likely, that she was dehydrated at the time of

1 presentation, and it is unknown how long she was
 2 down prior to being transported; correct?

3 **A. Yes.**

4 **Q.** So is it fair to say that your best guess
 5 at that time was that she was dehydrated?

6 **A. Yes. And she was having persistent**
 7 **tachycardia to suggest she was volume depleted at**
 8 **that time as well.**

9 **Q.** Okay. That would not be necessarily
 10 consistent with the chemistry that we just talked
 11 about, those markers; correct?

12 **A. It would be more concerning to me that**
 13 **she was tachycardic regardless of what the sodium**
 14 **was.**

15 **Q.** Okay. But, again, because I'm just
 16 looking at your language, Doctor, when you say it
 17 is likely, that's your best guess; correct?

18 **A. Yes.**

19 **Q.** Now, going back to your assessment and
 20 plan, I'd like you to focus in on this paragraph,
 21 paragraph 3.

22 **A. Okay.**

23 **Q.** She's now been seen by Dr. Peterson in
 24 the ER who suspected a toxidrome and gave her a
 25 charcoal lavage to pump her stomach of any poison;

1 correct?
 2 **A. Yes.**
 3 **Q.** Now, in the ICU you put your eyes on her.
 4 And you wrote under your assessment and plan "acute
 5 ingestion"; correct?
 6 **A. Yes.**
 7 **Q.** So you agreed with Dr. Peterson that
 8 based upon the signs and symptoms that she
 9 presented, there was a puzzle going on; correct?
 10 **A. Yes.**
 11 **Q.** Something didn't make sense. Fair to
 12 say?
 13 **A. Yes.**
 14 **Q.** And that something that didn't make
 15 sense, that something that nagged at you, was a
 16 possibility of an acute ingestion; correct?
 17 **A. Possibility. Yes.**
 18 **Q.** And you even wrote -- let me highlight
 19 that. This is an odd presentation, and the facts
 20 of the presentation remain unclear at this point;
 21 correct?
 22 **A. Yes.**
 23 **Q.** And, again, not questioning your care,
 24 you were working on what you could see and the
 25 limited information you received about the scene;

1 correct?
 2 **A. Yes.**
 3 **Q.** And here you wrote, acute ingestion.
 4 This is an odd presentation, and the facts of the
 5 presentation remain unclear at this point.
 6 The only known substances involved in the
 7 sweat house were sandalwood chips and frankincense
 8 resin; correct?
 9 **A. Yes.**
 10 **Q.** Neither of which you noted has a known
 11 toxicity; correct?
 12 **A. Yes. I'll say that that should be --**
 13 **that's inconsistent with the pinpoint pupils.**
 14 **That's an error on my part there.**
 15 **Q.** Okay. You're reading into the next
 16 paragraph?
 17 **A. Yes.**
 18 **Q.** Okay. Let me focus the jury on that.
 19 What you said here was presentation appeared to be
 20 consistent with an anticholinergic state with
 21 pinpoint pupils; correct?
 22 **A. Yes.**
 23 **Q.** So the clarification is that because she
 24 had pinpoint pupils, it would be cholinergic?
 25 **A. Yeah. I think the rest of that is --**

1 **well, it should be anticholinergic. But that**
 2 **one -- the pinpoint is an inconsistency with the**
 3 **anticholinergic.**
 4 **Q.** All right.
 5 **A. The rest of that statement would be true.**
 6 **Q.** Would your assessment of Ms. Neuman,
 7 given she had pinpoint pupils, you're thinking of a
 8 toxidrome, would it have been consistent with your
 9 evaluation had you known that Ms. Neuman was
 10 foaming at the scene -- hypersecretion?
 11 **A. I guess we were seeing the opposite here.**
 12 **Potentially it's the opposite presentation of what**
 13 **we were seeing at that point several hours later.**
 14 **Q.** Correct. I understand. So when you saw
 15 her at 10:25, she was no longer foaming; correct?
 16 **A. Correct.**
 17 **Q.** But if people saw her when she was
 18 immediately extracted from the sweat lodge foaming
 19 along with five other people, that would have been
 20 consistent with the killer bees that we talked
 21 about?
 22 **A. Foaming is more consistent with**
 23 **cholinergic. Yes.**
 24 **Q.** All right. What I'm gathering from your
 25 evaluation and Dr. Peterson's evaluation is that

1 this picture wasn't very clear. Was it?
 2 **A. Not initially.**
 3 **Q.** We'll talk about the summary you wrote
 4 when Ms. Neuman was taken off of life support on
 5 the 17th. But for those nine days when you were
 6 working with the other doctors to try and figure it
 7 out, it's fair to say it was, as you called it, an
 8 "odd presentation"; correct?
 9 **A. Yes.**
 10 **Q.** Meaning that it just didn't quite make
 11 sense to you? It wasn't quite clear that was heat
 12 stroke; correct?
 13 **A. Correct.**
 14 **Q.** There were presentations that made you
 15 and the other doctors, not just Dr. Peterson, but
 16 the doctors treating Stephen Ray and Tess Wong and
 17 Sidney Spencer -- everyone was thinking toxidrome;
 18 correct?
 19 **A. Yes.**
 20 **Q.** On October 17 Ms. Neuman was taken off of
 21 life support; correct?
 22 **A. Yes.**
 23 **Q.** And you wrote then a summary. And I'll
 24 ask you to refer, then, to Exhibit 366, Bates stamp
 25 3018.

02:42:33PM 1 A. Okay.

02:42:34PM 2 Q. I'm sorry. I'm going to make you go back

02:42:35PM 3 to Bates stamp 3016. Under your assessment and

02:42:41PM 4 plan -- I'm sorry to do this. I'm going to have

02:42:48PM 5 you go back to 3014.

02:42:53PM 6 A. Okay.

02:42:54PM 7 Q. When you evaluated Ms. Neuman in critical

02:42:56PM 8 care, you noted admission diagnosis; correct?

02:43:14PM 9 A. Yes.

02:43:14PM 10 Q. Would that admission diagnosis be yours

02:43:17PM 11 or is that another doctor's?

02:43:20PM 12 A. That was mine.

02:43:25PM 13 Q. It's not working. Under admission

02:43:35PM 14 diagnosis could you tell the jury what your

02:43:38PM 15 diagnosis of Ms. Neuman was on October 8.

02:43:41PM 16 A. Respiratory failure, acute renal failure

02:43:43PM 17 and attended mental status.

02:43:47PM 18 Q. Okay. Now I want you to go, if you will,

02:43:49PM 19 Doctor, to your summary at page 3018.

02:43:54PM 20 A. Okay.

02:43:55PM 21 Q. Your admitting diagnosis, I noticed,

02:44:10PM 22 changed from October 8 to the time you wrote this

02:44:13PM 23 report of October 17. Is that fair to say?

02:44:16PM 24 A. Yes.

02:44:16PM 25 Q. An admitting diagnosis is your impression

02:44:19PM 1 upon admission; correct?

02:44:20PM 2 A. Yes.

02:44:20PM 3 Q. Upon your evaluation; correct?

02:44:22PM 4 A. Yes.

02:44:22PM 5 Q. It's not your final diagnosis; correct?

02:44:26PM 6 A. Correct.

02:44:26PM 7 Q. And so in the first instance when you saw

02:44:28PM 8 her, you made no mention of heat stroke; is that

02:44:28PM 9 correct?

02:44:32PM 10 A. Correct.

02:44:32PM 11 Q. And then in this admitting diagnosis on

02:44:34PM 12 October 17, you wrote, heat stroke with anoxic

02:44:37PM 13 brain injury; is that correct?

02:44:39PM 14 A. Yes.

02:44:39PM 15 Q. Can you tell me why that changed -- and I

02:44:42PM 16 understand when you talk about your final

02:44:43PM 17 diagnosis, but under admitting diagnosis why that

02:44:46PM 18 changed.

02:44:47PM 19 A. Part of that is some of it is to do with

02:44:49PM 20 medical billing. And it's not a cause of death to

02:44:52PM 21 say respiratory failure for medical billing. And

02:44:55PM 22 so there needs to be some clarification, when

02:44:57PM 23 you're approaching a death summary, of what

02:44:59PM 24 billable causes of death and what can be written on

02:44:59PM 25 a death certificate. And they won't accept vaguer

02:45:03PM 1 answers than that. They need specifics of what the
02:45:03PM 2 cause was at the time.

02:45:03PM 3 So it does need to be clarified more
02:45:08PM 4 so -- you know -- at the time of death summary.

02:45:11PM 5 Q. Okay. So you did that for the billing
02:45:13PM 6 purposes; correct?

02:45:14PM 7 A. Yes. They need to be accurate as well.
02:45:17PM 8 But the reality is I don't always get to pick the
02:45:20PM 9 words I want to say for how it's done. Because
02:45:22PM 10 then if you put a nonbillable code, then they --
02:45:26PM 11 it's not something that you can -- it's not
02:45:30PM 12 acknowledged on the billing.

02:45:32PM 13 Q. Okay. So if it were not for these
02:45:35PM 14 billing restrictions, you would have stayed with
02:45:37PM 15 the language you used on October 8; correct?

02:45:37PM 16 A. We give them more information later on.
02:45:37PM 17 There definitely was the DIC picture and other
02:45:46PM 18 things that are developed. She went on to dialysis
02:45:49PM 19 and renal failure. So there was a lot more that
02:45:49PM 20 was known eight days into it. The anoxic brain
02:45:51PM 21 injury wasn't known at the time of her
02:45:53PM 22 presentation. It was more of a mental status
02:45:55PM 23 change. So there definitely was more information
02:45:58PM 24 acquired over the course of eight days as well.

02:45:59PM 25 Q. Except for the information that we talked

1 know if I spoke with all of them at once, but
2 they'd been speaking amongst each other when all
3 these patients came in.

4 Q. Okay.

5 A. I know I did talk with several of the ED
6 doctors.

7 Q. Let's take a look at Dr. Earl's
8 evaluation of Ms. Spencer's pupils. He noted that
9 they were also two millimeter pinpoint like Liz
10 Neuman's; correct?

11 A. Yes.

12 Q. And that would be -- you do see that it's
13 pupils noted to be approximately two millimeter and
14 minimally reactive; correct?

15 A. Yes.

16 Q. He also noted that she had saliva around
17 the tube. And the tube being?

18 A. Yes.

19 Q. And that was noted because that would be
20 excessive saliva around the tube, which required it
21 to be suctioned; is that correct?

22 A. I'm not sure why he noted it. Further on
23 in the same thing he says she's had no excessive
24 salivation at the bottom.

25 Q. Okay. And we'll get there.

1 A. I'm not sure what Dr. Earl was thinking
2 when he did it.

3 Q. Fair enough. He noted she had saliva
4 around the tube and was suctioned on arrival;
5 correct?

6 A. That's documented.

7 Q. And then further down after he's done a
8 complete evaluation, he talks about no excessive
9 salivation?

10 A. Correct.

11 Q. Okay. He also noted in his evaluation of
12 her the differential diagnoses that he came to
13 based upon her signs and symptoms; correct?

14 A. Yes.

15 Q. And, again, that's because a lot of the
16 signs and symptoms that Ms. Spencer showed could
17 have been caused by a number of disorders; correct?

18 A. Yes.

19 Q. One of them, the first one, he indicated
20 was toxicity secondary to carbon monoxide; correct?

21 A. Yes.

22 Q. So can you explain to the jury, what does
23 it mean when a doctor says something is secondary
24 to something else?

25 A. He was implying that there was -- the

1 mental status change in her presentation was as a
2 result of carbon monoxide poisoning. This is
3 before any of the levels were back.

4 Q. Okay.

5 A. So timing of the documentation varies
6 on -- some people had all the results back, some
7 didn't, by the time they completed documentation.

8 Q. Okay. So when he says, toxicity
9 secondary to carbon monoxide at this time, it later
10 was ruled out. We know it's not carbon monoxide;
11 right?

12 A. He said he was waiting on the level. It
13 wasn't back yet. But it was negative.

14 Q. Okay. At some point you were aware it
15 came back negative?

16 A. Right.

17 Q. Okay. The secondary differential
18 diagnose -- and if I may ask you, when a doctor
19 writes a differential diagnoses and numbers them,
20 is the order important at all?

21 A. I'd say not necessarily.

22 Q. Okay. So this is not like --

23 A. A lot of this is just to kind of pass
24 along a train of thought what they were
25 investigating, what they were looking into. And

1 obviously none of these things were a definitive
2 diagnosis at this point.

3 Q. Got it. And that's information to pass
4 on to you; correct?

5 A. Yes.

6 Q. Okay. The second thing he indicated
7 based upon her signs and symptoms, again, he's
8 still thinking of an ingestion, and it was a
9 possible opiate overdose; correct?

10 A. Yes.

11 Q. Again, all of this is because she
12 presented with the pinpoint pupils?

13 A. Yeah. That fits with the pinpoint
14 pupils.

15 Q. All right. The third differential
16 diagnosis is metabolic disturbances, including
17 significant electrolyte or glucose abnormality;
18 correct?

19 A. Yes.

20 Q. Like Liz Neuman, she also had lab and
21 chemistry testing done to see if she showed those
22 markers for dehydration; correct?

23 A. Yes.

24 Q. And you are aware that she -- her results
25 also came back with no dehydration?

1 **A. Look at the numbers real quick.**
 2 **Q.** I might have misspoken, Doctor. If you
 3 look at Bates stamp 2087 --
 4 **A. One page is missing out of here.**
 5 **Q.** And I'll direct you --
 6 **A. Sodium and chloride are normal with an**
 7 **elevated BUN.**
 8 **Q.** Okay. And so that indicates to you mild
 9 dehydration; is that correct?
 10 **A. Yeah. It's minor renal insufficiency.**
 11 **It's a number that usually corresponds with the**
 12 **creatinine we talked about before.**
 13 **Q.** Okay. So what is it? Is she dehydrated,
 14 or is that number of the BUN related to the renal
 15 failure?
 16 **A. It's related to the renal failure, which**
 17 **could mean -- for some reason the renal function is**
 18 **not normal, which could be from dehydration.**
 19 **Q.** Okay. So the other markers showed
 20 normal; is that correct?
 21 **A. Yeah. The electrolytes were normal.**
 22 **Q.** If you look on the second page of the lab
 23 results, Bates stamp 2088, the UA specific gravity,
 24 which we talked about is another marker, is also
 25 normal; correct?

1 **A. Yes.**
 2 **Q.** Going back to Dr. Earl's ER evaluation of
 3 Ms. Spencer, the last thing he wrote was additional
 4 considerations would be other sedative hypnotic
 5 intoxication.
 6 She does not fit any other obvious other
 7 toxidrome; correct?
 8 **A. Yes.**
 9 **Q.** And you would agree with me that, based
 10 upon Dr. Earl's evaluation, he, like you, were
 11 looking at this and thinking this is a puzzle, a
 12 toxidrome; correct?
 13 **A. That was in the differential for sure.**
 14 **Yes.**
 15 **Q.** And do you recall whether or not that was
 16 specifically discussed between you, Dr. Earl and
 17 the other doctors?
 18 **A. I think we discussed similar to what we**
 19 **have been now, is just that we were -- you know --**
 20 **we did specifically discuss those finding of the**
 21 **small pupils and tachycardia and the high**
 22 **temperature in some of the cases but not all of the**
 23 **cases.**
 24 **Q.** Okay. Going to this last paragraph that
 25 Mr. Hughes showed you, consideration also regarding

1 the possibility of a cholinergic overdose with her
 2 relatively miotic pupils. And that's what we've
 3 been discussing; correct?
 4 **A. Yes.**
 5 **Q.** And cholinergic includes
 6 organophosphates; correct?
 7 **A. Yes.**
 8 **Q.** She -- Dr. Earl wrote, she had no
 9 excessive salivation; correct?
 10 **A. Yes.**
 11 **Q.** Now, if Dr. Earl or you, being the ICU
 12 doctor, had received information that Ms. Spencer
 13 at the scene on October 8 when she was pulled out
 14 of the sweat lodge had foaming at the mouth, that
 15 would be considered excessive salivation or
 16 secretion; correct?
 17 **A. Yes. I'm just stuck with the information**
 18 **from the physicians I talked to. But that's**
 19 **potentially important information.**
 20 **Q.** And I understand, Doctor. Again, I'm not
 21 questioning you're care. You did what you did on
 22 the information you had. But if someone had frothy
 23 sputum or excessive salivation, foaming at the
 24 mouth, that would be information that would be
 25 consistent with a cholinergic overdose or exposure;

1 correct?
 2 **A. It would be. But when we're specifically**
 3 **considering giving antidotes or not, it's important**
 4 **to see persistent symptoms at that time. And if**
 5 **the symptoms had resolved, that would also not**
 6 **affect what we were doing if they used to have**
 7 **excessive salivation. It wouldn't make me want to**
 8 **give an antidote to somebody who no longer has**
 9 **symptoms but might have had symptoms a while ago.**
 10 **We already have an airway, and we're**
 11 **already protecting them and hydrating them and**
 12 **doing a lot of things at that point, which are**
 13 **going to be the -- really the foundation of the**
 14 **treatment.**
 15 **If there were persistent symptoms to**
 16 **suggest cholinergic overdose, then it's almost --**
 17 **the physical exam at that time was as important.**
 18 **Q.** Understood. So in terms of your
 19 decisions regarding what care to give these
 20 patients, you would want to see the symptoms
 21 persist when you give that care; correct?
 22 **A. Yeah. A lot of the approach we're having**
 23 **to looking and see if there is ongoing symptoms**
 24 **that we can do something to help.**
 25 **Q.** Got it.

1 **A. The observation. Yes.**

2 **Q.** Dr. Kennedy, like Dr. Neff, also
3 indicated in this particular report -- and I'll
4 have you turn to page 7098, please.

5 Dr. Kennedy on October 10, observing and
6 examining Mr. Ray, consistent with Dr. Neff, also
7 wrote, this patient does not appear to have had
8 heat stroke; correct?

9 **A. That's what she documented. Yes.**

10 **Q.** My question to you, Doctor, is -- I'm
11 going to wrap this up. I know we've gone through a
12 lot of information. I just want to summarize. Is
13 that you had four critical patients come in all
14 with pinpoint pupils; correct?

15 **A. Yes.**

16 **Q.** And you weren't told, but I want you to
17 assume that the evidence in this case is that all
18 four of these folks, in addition to the other two
19 that died, were seen at the incident with foaming
20 or frothy sputum. Okay?

21 Liz Neuman was noted to have, as you
22 indicated in the records, by the paramedics to have
23 cool and clammy skin; correct?

24 **A. Yes.**

25 **Q.** And as you saw with Mr. Ray, he was also

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1 noted to have moist skin and pinpoint pupils;
2 correct?

3 **A. Yes.**

4 **Q.** They all presented with respiratory
5 failure; correct?

6 **A. They were all intubated at least. Yes.**

7 **Q.** Okay. Respiratory failure with the
8 foaming; correct?

9 **A. I don't know that they all had foaming.**

10 **Q.** I want you to assume that, then. If the
11 evidence in this case is that they all had foaming,
12 that's considered in connection with the
13 respiratory failure, the killer bees that we talked
14 about, the bronchorrhea; correct?

15 **A. I don't understand the question.**

16 **Q.** It's poorly worded.

17 **A. I don't agree that they were all foaming.**

18 **Q.** Because you don't know?

19 **A. If you're just saying the patients are
20 foaming, you're creating a scenario, that's fine.**

21 **Q.** Okay. Thank you. That's correct. If
22 you were told during the time that you had
23 Ms. Neuman those nine days in your care that she
24 and the other three critically ill and the other
25 two decedents had frothy sputum, that's a fact you

1 would have considered; correct?

2 **A. Yes.**

3 **Q.** You were never told by anyone that there
4 was a statement that night by a first responder
5 that somebody has suspected organophosphates at the
6 scene; correct?

7 **A. Correct.**

8 **Q.** And that information could have allowed
9 you to either preserve samples or send them out for
10 testing; correct?

11 **A. Correct.**

12 **Q.** Now, given all these indications, Doctor,
13 as you sit here before this jury, can you tell them
14 with certainty that you can rule out
15 organophosphates?

16 **A. I can't say I can rule it out with
17 certainty. No.**

18 MS. DO: Thank you, Your Honor.

19 Thank you, Doctor.

20 THE COURT: Thank you, Ms. Do.

21 Mr. Hughes.

22 MR. HUGHES: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. HUGHES:

25 **Q.** Doctor, I realize it's 4:00. And you

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1 indicated in the break you have to be in Flagstaff
2 at the hospital at what time?

3 **A. About 6:00 o'clock or so.**

4 **Q.** And what time do you need to leave to
5 make it to the hospital?

6 **A. Oh, hopefully before 5:00 if that's
7 possible.**

8 **Q.** We'll do our best.

9 Doctor, you've been asked a number of
10 questions about cholinergic and anticholinergic
11 and other forms of toxidromes. Can you tell us, if
12 you would, what the classic -- specifically you
13 were asked about organophosphates poisoning. Do
14 you recall that?

15 **A. Yes.**

16 **Q.** And would organophosphates poisoning be
17 a -- what sort of toxidrome would that be?

18 **A. Cholinergic.**

19 **Q.** So organophosphates poisoning is
20 cholinergic?

21 **A. Yes.**

22 **Q.** Can you tell us what the classic signs
23 and symptoms of a cholinergic --

24 **A. As we've talked about, there is a bit of
25 a mixed picture with nicotinic and muscarinic**

1 receptors. The muscarinic can be nausea, vomiting,
2 diarrhea, abdominal cramping, small pupils,
3 bradycardia and then moist mucosa and sweating.

4 Q. So we've got nausea and vomiting. What
5 did you have after that?

6 A. Abdominal cramping.

7 Q. Okay.

8 A. Miosis or the small pupils, bradycardia.

9 Q. What is bradycardia again?

10 A. Slow heart rate. And then just moist
11 mucosa and sweating. And then the variable with
12 the nicotinic. We talked about there could be some
13 potential faster heart rate responses with those
14 receptors or higher blood pressure?

15 Q. And nicotinic is a form of a
16 cholinergic toxin?

17 A. Well, there is two receptors on the --
18 the organophosphates affect two muscle receptors,
19 which is a nicotinic and a muscarinic. Just kind
20 of a complex response it has.

21 Q. So is that in every case or is that just
22 a possibility?

23 A. The acetylcholine affects both of them.

24 Q. Okay. But you listed some nicotinic
25 (sic) factors that you said it could be. Would

1 those be factors that you would ordinarily see in a
2 cholinergic toxin?

3 A. It can be a little bit of a mixed
4 picture, but I would say the predominant would be
5 what we read.

6 Q. Okay. What are the other possible
7 factors that you mentioned?

8 A. Well, with the nicotinic it's
9 specifically the increased blood pressure. And
10 could be tachycardia instead of bradycardia, also a
11 lot of muscle fasciculation.

12 Q. You said muscle --

13 A. Fasciculation.

14 Q. Could you tell me what that would mean.

15 A. Kind of twitching. It's affecting the
16 muscle response. You will see twitching in big
17 muscles.

18 Q. Okay. Now, on these factors that we've
19 discussed, the nausea and vomiting -- is that
20 something that you would also expect to see in some
21 patient who is suffering from heat stroke?

22 A. In heat stroke, yes.

23 Q. And how about the abdominal cramps?

24 A. You can see that with heat stroke as
25 well. Yes.

1 Q. How about the small pupils?

2 A. I would say there is not a specific pupil
3 response with the heat stroke.

4 Q. In other words, is it possible heat
5 stroke could cause you to have wide pupils?

6 A. I don't know of anything specific with
7 heat stroke that's going to cause a pupil change.

8 Q. Okay. Would the fact that a patient
9 presents with small pupils then rule out the
10 possibility that they could have heat stroke?

11 A. I don't think so.

12 Q. And can you explain why.

13 A. I don't have a clear -- I don't have a
14 direct textbook explanation for it. I think there
15 are a lot of things that are going on with people
16 that are critically ill. Particularly if there is
17 other anoxic brain issues and things going on, it
18 can affect that. It's not a classic finding, I
19 would say, to have small pupils with heat stroke,
20 but it doesn't exclude it.

21 Q. You mentioned anoxic brain injury. Would
22 you expect -- would a person presenting with heat
23 stroke, would you expect to have them suffering
24 from an anoxic brain injury?

25 A. Again, that's just referring to the

1 spectrum of an event. It it's a very severe case,
2 they could be. They wouldn't necessarily have
3 that, though.

4 Q. Moist mucosa. Is that something you
5 would expect to see in heat stroke?

6 A. I would not expect to see with heat
7 stroke. You expect to be more dehydrated.

8 Q. And sweating?

9 A. You know, initially you are going to be
10 sweating and trying to compensate. I think the
11 issue with the heat stroke is there is a point
12 where you become decompensated. But I think if
13 you've become dehydrated, you might stop sweating.
14 Your normal response would be to sweat with heat
15 exposure.

16 Q. You said possible other factors that you
17 might see if it's one of those nicotinic (sic)
18 forms of the toxidrome would be an increased blood
19 pressure? Is that correct?

20 A. Yes. I would say I would not to expect
21 to see that with heat stroke.

22 Q. What about a patient who gets intubated,
23 a heat stroke patient who is intubated? Would you
24 expect to see any change in their blood pressure?

25 A. Again, that just complicates things

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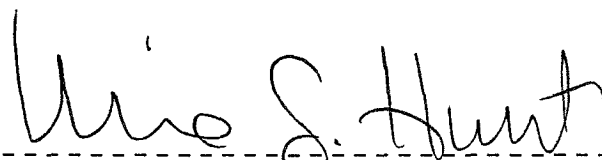
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5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 9th day of April, 2011.

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MINA G. HUNT, AZ CR No. 50619
CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY TWENTY-FOUR
MARCH 30, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 Q. And then it states PIV initiated -- you
 2 explained what PIV was -- and fluid bolus given.
 3 Can you tell us what a fluid bolus is.
 4 A. That is fluid given in a rapid manner to
 5 address the low blood pressure and the rapid heart
 6 rate.
 7 Q. Is -- is rapid administration of fluid
 8 something that's commonly done when a person has
 9 low blood pressure?
 10 A. Yes. It's part of the guideline.
 11 Q. Okay. Turning, then, to the next section
 12 of the report, past medical history, current
 13 medications, and allergies; what, if anything, do
 14 those sections tell us?
 15 A. So we -- we were not able to obtain any
 16 information as to what other medical problems this
 17 patient might have had or any of the medications
 18 that they might have been taking -- taken or any
 19 allergies to medications that they might have had.
 20 Q. And can you tell us why you're not able
 21 to get that information.
 22 A. The -- the patient was not able to speak
 23 to us, and there wasn't someone there that was able
 24 to give us that information.
 25 Q. Did anyone provide you, say, a medical

1 form that had that information in it for the
 2 patient?
 3 A. No.
 4 Q. Underneath that it indicates,
 5 neurological exam. Can you tell us what this
 6 section, the neurological exam section, tells us.
 7 A. So it refers to level of consciousness
 8 and the patient response to pain. So, for example,
 9 when you're starting an I.V., the patient would
 10 respond to that pain from the I.V.
 11 Q. How do you mean they would respond?
 12 A. Typically -- well, in this particular
 13 situation, would motion away from the pain or a
 14 pull back from when the I.V. was initiated.
 15 Q. And, Mr. Swedberg, are you familiar with
 16 the AVPU, A-V-P-U, scale for assessing in the field
 17 a patient's level of consciousness?
 18 A. Yes.
 19 Q. And can you tell us what that scale is.
 20 A. "AVPU" stands for alert to verbal
 21 stimuli, to painful stimuli, or unresponsive.
 22 Q. And how is that scale used in the field
 23 to determine a patient's level of consciousness?
 24 A. Exactly as said. The patient might be
 25 alert to me walking in the room and saying, hello.

1 My name is Joel. And the patient responds. And
 2 the patient might respond to a painful stimuli,
 3 such as starting an I.V. or the patient might not
 4 respond at all and be termed "unresponsive."
 5 Q. Is there a more precise scale other than
 6 the AVPU scale that paramedics and doctors, nurses
 7 use for assessing level of consciousness?
 8 A. Yes.
 9 Q. And what is that scale called?
 10 A. It's -- it's referred in the chart as the
 11 Glasgow Coma Scale.
 12 Q. Okay. And is that this area right down
 13 here?
 14 A. Yes, sir.
 15 Q. And can you explain what the Glasgow Coma
 16 Scale is noted as being in this particular case and
 17 what the significance of those numbers are.
 18 A. The total number that was given to this
 19 patient was 7. Normal is 15. The "E" under
 20 initial is noted to be 1. And that means there was
 21 no response --
 22 Q. Does that --
 23 A. -- to the eye movement.
 24 Q. I'm sorry, Mr. Swedberg. Please
 25 continue.

1 A. That's -- that's as low as it can get.
 2 Verbal, there was no verbal response
 3 either. And that's as low as it can get. Motors
 4 being a 5 refers to the patient moving or
 5 responding to pain but not able to follow commands.
 6 Q. And to determine the number, then, for
 7 the GCS, or Glasgow Coma Scale, do you then add up
 8 those three scores?
 9 A. That's correct.
 10 Q. And then as far as level of
 11 consciousness, this information in that section,
 12 can you tell us what's depicted in that area.
 13 A. So the patient is termed to be
 14 unresponsive, both in orientation and mentally.
 15 Chemically paralyzed says no. And because the
 16 patient is unresponsive, we have to say that she
 17 lost consciousness.
 18 Q. And then what do neuro comments and
 19 mental mean?
 20 A. So what we noted was some fine tremors in
 21 the upper extremities and -- you know -- that means
 22 just, basically, shaking.
 23 Q. And then underneath that it indicates,
 24 pupils left and right constricted. What does that
 25 mean?

1 A. So we assessed the black part of the eye
2 by placing a light over it. And they were
3 pinpoint, the size of the tip of a pen.

4 Q. And then underneath that it indicates,
5 Motor comments and sensory comments.

6 A. So we -- we noted that the patient had
7 movement of the upper extremities and would move
8 them in response to nauseous stimuli, such as
9 getting close to a very noisy helicopter or having
10 an I.V. started.

11 Q. And how do you mean she moved her upper
12 extremities?

13 A. There -- there was movement in them,
14 either localizing the pain or some movement.

15 Q. And --

16 A. She was not paralyzed of the upper --
17 upper extremities.

18 Q. Okay. Underneath that it indicates an
19 airway and respiratory. Can you tell us what, if
20 you would, what -- what those mean on the report.

21 A. It was patent. The airway was patent.
22 It wasn't compromised. And "tachypnea" means rapid
23 respirations.

24 Q. And what would you consider to be a rapid
25 respiration?

1 A. Anything over 20.

2 Q. And was that part, then, of the
3 observation that you told us about earlier about
4 these Kussmaul respirations?

5 A. Yes.

6 Q. Now, are all rapid respirations Kussmaul?

7 A. No.

8 Q. Are all Kussmaul respirations rapid?

9 A. Yes.

10 Q. Okay. Turning to the top of the next
11 page -- I'm afraid it's cut off a little bit on the
12 upper left corner. But it says something by. Do
13 you know what that is referenced to?

14 A. I don't.

15 Q. It says performed by --

16 A. Okay. So that's a continuation of the
17 previous page.

18 Q. And is that the previous page which was
19 talking about airway?

20 A. Correct.

21 Q. Okay. Can you tell us, then, what
22 "performed by patient" means?

23 A. So her airway was patent and she was able
24 to -- to maintain it that way.

25 Q. And what do "sounds left and right clear"

1 mean?

2 A. Those are in reference to lung sounds.
3 In auscultating her lung fields, they were noted to
4 be clear.

5 Q. And then underneath comments, can you
6 tell us what that means.

7 A. So this is the description that my
8 partner had obtained in assessing the patient. She
9 stated that the patient would moan occasionally
10 with nauseous stimuli. The airway was clear and
11 good. Good entry. That means chest -- chest
12 expansion was noted.

13 Q. And then oxygen and performed by. Can
14 you tell us what that means.

15 A. So this is the liters per minute
16 delivered, which was 15. Again, that's a
17 nonrebreather mask. And it was performed by the
18 EMS providers there on the scene.

19 Q. And under cardiovascular, can you tell us
20 what "JVD" and "cap refill" mean?

21 A. JVD is in reference to jugular venous
22 distention. And that's the vein for the neck. And
23 we did not note any jugular vein distention.

24 Cap refill is a test done by merely
25 pressing on the fingertip and watching it blanch

1 and then timing how long it takes for it to refill
2 to the pink color that it was.

3 Q. Is there a typical number of seconds that
4 you would expect to see for a healthy patient, a
5 normal patient?

6 A. Less than two seconds.

7 Q. And seeing a capillary refill of greater
8 than two seconds, does that somehow tie into this
9 low blood pressure that you mentioned earlier?

10 A. It's -- it's an indication of the
11 condition of the patient. And yes, it does -- it
12 is affected by -- by blood pressure and
13 circulation.

14 Q. And then underneath -- I think there's
15 probably a typo in the report. Temperature 207.5.
16 Is that an accurate number?

17 A. No, sir.

18 Q. And can -- do you have an idea how that
19 came about?

20 A. Yes. This is a computer charting system.
21 And a number was entered in Fahrenheit. But the
22 computer defaults to Celsius. So you enter a
23 number, and the computer recognizes it as being
24 Celsius. As soon as you click Fahrenheit, it
25 converts it from Celsius to Fahrenheit.

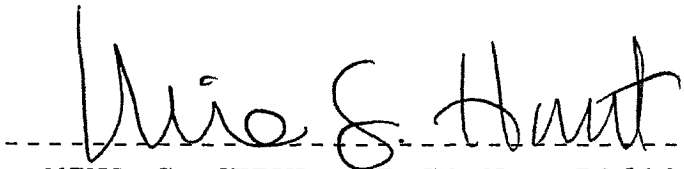
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8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 10th day of April, 2011.

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MINA G. HUNT, AZ CR No. 50619
CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
 Plaintiff,)
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 vs.) Case No. V1300CR201080049
)
 JAMES ARTHUR RAY,)
)
 Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY TWENTY-FIVE
MARCH 31, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 **A. Yes.**
 2 **Q.** And do you as a medical examiner adhere
 3 to those guidelines?
 4 **A. Yes.**
 5 **Q.** Do you as a medical examiner from Yavapai
 6 County and Maricopa County, both offices, adhere to
 7 that guideline?
 8 **A. We try to.**
 9 **Q.** Could you tell the jury, under the
 10 guidelines of this association, what is the
 11 percentage that you have to be certain of, with
 12 respect to your conclusion, in order to sign a
 13 death certificate?
 14 **A. It depends on the cause of death.**
 15 **Q.** Okay. In this case?
 16 **A. In this case, an accident, more likely**
 17 **than not or preponderance of evidence, which would**
 18 **mean greater than 50 percent.**
 19 **Q.** So let's talk about the matter --
 20 the 51 -- greater than 50 percent. That means
 21 51/49; correct?
 22 **A. Correct.**
 23 **Q.** And does that apply to cause?
 24 **A. It applies to both.**
 25 **Q.** Cause and manner?

1 **A. Correct.**
 2 **Q.** So in addition to the medical facts being
 3 5 to 10 percent of your conclusion, you're also
 4 telling this jury that your conclusion is 51
 5 percent; right?
 6 **A. Correct.**
 7 **Q.** Meaning that all you had to determine is
 8 that it's just a little bit more likely that it's
 9 heat stroke in order to reach that conclusion;
 10 correct?
 11 **A. Correct.**
 12 **Q.** 51/49?
 13 **A. Correct.**
 14 **Q.** And so, as you sit here, Dr. Lyon, can
 15 you tell the jury whether you believe the cause of
 16 death in this case is heat stroke beyond a
 17 medical -- reasonable medical degree of certainty?
 18 **A. No.**
 19 **Q.** And you understand that in a criminal
 20 case involving homicide, the standard, the burden,
 21 for the jury is beyond a reasonable doubt?
 22 **A. Correct.**
 23 **Q.** And those two are not the same; correct?
 24 **A. Correct.**
 25 **Q.** Let me talk to you a little bit more

1 about your conclusion and Dr. Mosley's conclusion.
 2 We understand you did not perform the autopsy or
 3 the investigation of Ms. Neuman. Correct?
 4 **A. Correct.**
 5 **Q.** Did you know Dr. Mosley prior to this
 6 case?
 7 **A. Yes.**
 8 **Q.** That was from prior professional
 9 dealings?
 10 **A. Yes.**
 11 **Q.** Do you believe that Dr. Mosley is a
 12 competent medical examiner?
 13 **A. Yes.**
 14 **Q.** A reliable one?
 15 **A. Yes.**
 16 **Q.** A good one; correct?
 17 **A. Correct.**
 18 **Q.** And you agree that like any profession,
 19 there can be a reasonable difference of opinion?
 20 **A. Correct.**
 21 **Q.** And doesn't mean anyone is wrong. There
 22 is just a difference of opinion; correct?
 23 **A. Correct.**
 24 **Q.** And in this case, Dr. Lyon, you and
 25 Dr. Mosley did have a difference of opinion. And

1 we'll talk about it in more detail. You did have a
 2 difference of opinion; correct?
 3 **A. Correct.**
 4 **Q.** And that difference of opinion was
 5 whether or not to call the cause of death in this
 6 case "heat stroke" or not; correct?
 7 **A. Correct.**
 8 **Q.** And this difference of opinion that you
 9 had with Dr. Mosley, the other medical examiner in
 10 this case, was one of the subjects of the meeting
 11 you had with the county attorney and the sheriff's
 12 office on December 13; correct?
 13 **A. Correct.**
 14 **Q.** So let me talk to you a little bit about
 15 the difference of opinion with Dr. Mosley. And
 16 we're going to talk about that meeting. Again,
 17 people can have reasonable differences; correct?
 18 **A. Correct.**
 19 **Q.** And Dr. Mosley in this case believed,
 20 based upon his training and experience, that in
 21 order to call something "heat stroke," you had to
 22 find objective medical criteria of an elevated body
 23 temperature; correct?
 24 **A. Correct.**
 25 **Q.** And that elevated body temperature,

1 according to Dr. Mosley, is 106 degrees Fahrenheit?
 2 **A. I don't know that.**
 3 **Q.** Do you know whether or not in the medical
 4 literature, in the medical profession, that many
 5 doctors, forensic pathologists, believe you need to
 6 find a threshold requirement of 104, 105, or 106?
 7 **A. Not forensic pathologists.**
 8 **Q.** Okay. Doctors?
 9 **A. Yes.**
 10 **Q.** And it was Dr. Mosley's opinion, because
 11 there was no evidence of an elevated core
 12 temperature in any of these decedents, that he
 13 could not call it "heat stroke"; correct?
 14 **A. Correct.**
 15 **Q.** And you differed with him?
 16 **A. Correct.**
 17 **Q.** And that difference of opinion is that
 18 sometimes you can't get a core temperature;
 19 correct?
 20 **A. Correct.**
 21 **Q.** And so you felt that that did not
 22 preclude a finding of heat stroke?
 23 **A. Correct.**
 24 **Q.** But that was a difference you had with
 25 Dr. Mosley?

1 **A. Correct.**
 2 **Q.** Dr. Mosley also disagreed with the cause
 3 of death being called "heat stroke" because he
 4 felt, based upon his training and experience, that
 5 there had to be evidence of dehydration; correct?
 6 **A. I don't recall that.**
 7 **Q.** Okay. If Dr. Mosley were to say that,
 8 would you have any reason to dispute?
 9 **A. No.**
 10 **Q.** You would agree with me -- right? -- that
 11 in your field there are many doctors who differ
 12 with you and believe that dehydration is a
 13 component of heat stroke?
 14 **A. Correct.**
 15 **Q.** And in this case Kirby Brown showed no
 16 evidence of dehydration?
 17 **A. Correct.**
 18 **Q.** James Shore showed no evidence of
 19 dehydration?
 20 **A. Correct.**
 21 **Q.** You did become aware in reviewing Liz
 22 Neuman's medical records she showed no evidence of
 23 dehydration?
 24 **A. I don't recall that.**
 25 **Q.** Any reason to dispute that?

1 **A. No.**
 2 **Q.** And we already know that none of these
 3 folks had an elevated core temperature above 104
 4 degrees Fahrenheit; correct?
 5 **A. None that was documented.**
 6 **Q.** Do you know that Liz Neuman had a
 7 documented rectal temperature of 101.7 degrees at
 8 about 6:46 p.m.?
 9 **A. I don't recall that.**
 10 **Q.** Would that in any way change your
 11 opinion?
 12 **A. No.**
 13 **Q.** Again, you had a difference of opinion
 14 with Dr. Mosley; correct?
 15 **A. Correct.**
 16 **Q.** Let me digress for just a moment here. I
 17 understand it's your belief that dehydration is not
 18 a necessary component. But you do acknowledge that
 19 there are many others in your profession, the
 20 medical field, that believe that dehydration is the
 21 pathway to death and a necessary component;
 22 correct?
 23 **A. I don't know that. There are physicians**
 24 **out there that do believe that.**
 25 **Q.** Many of them would include the doctors

1 that treat live patients, emergency medicine
 2 doctors; correct?
 3 **A. I don't know.**
 4 **Q.** No reason to dispute it?
 5 **A. No.**
 6 **Q.** Mr. Hughes asked you a number of
 7 questions about whether or not you can,
 8 essentially, rehydrate someone who is deceased. Do
 9 you remember those questions?
 10 **A. Yes.**
 11 **Q.** And it's your opinion -- right? -- that
 12 you cannot rehydrate a person who is deceased?
 13 **A. Correct.**
 14 **Q.** If somebody is asystolic for more than an
 15 hour and all the witnesses who put their eyes and
 16 their hands on that person believe that person to
 17 be asystolic and deceased, you can't rehydrate
 18 them; correct?
 19 **A. Correct.**
 20 **Q.** So the vitreous fluid testing that you
 21 did that you sent out on October 13th -- you have
 22 no reason to dispute the accuracy of those results;
 23 correct?
 24 **A. Correct.**
 25 **Q.** And, as I understand it, vitreous testing

1 Q. All right. Do you recall, then, seeing
2 Dr. Furrey's comment here -- most of these records,
3 Doctor, are dictated and someone transcribed;
4 correct?

5 A. Correct.

6 Q. So this perhaps is a typo. I "splenened"
7 to the patient, Dennis Mehravar, that we did not
8 have a cause for his symptoms or the other people's
9 symptoms that were in the sweat lodge, including
10 the two people that died. Correct?

11 A. Correct.

12 Q. This is the kind of doctor that you said
13 would be better at determining the signs and
14 symptoms of heat stroke; correct?

15 A. Correct.

16 Q. And he said he didn't know?

17 A. Correct.

18 Q. In regard to the summaries or whatever it
19 was that you got regarding witness statements from
20 Detective Diskin, did they ever tell you that there
21 were witnesses who were interviewed that said they
22 saw at least six people foaming at the mouth at the
23 scene?

24 MR. HUGHES: Objection, Your Honor. Misstates
25 the testimony and assumes facts not in evidence.

1 THE COURT: I'll sustain as to the form of the
2 question.

3 MS. DO: Sure, Your Honor.

4 Q. Were you ever told by Detective Diskin
5 that any witness had seen anybody coming out of the
6 sweat lodge ceremony foaming at the mouth?

7 A. I don't recall.

8 Q. Is that something that you would
9 remember?

10 A. It's possible. He may have told me and I
11 don't remember.

12 Q. And you would agree with me that foaming
13 is an objective physical symptom that you might put
14 under medical facts; correct?

15 A. Correct.

16 Q. And foaming or frothy sputum at the
17 mouth -- do you know whether or not that is a sign
18 and symptom of a toxidrome, if you know?

19 A. It can be.

20 Q. It can be; correct?

21 A. Correct.

22 Q. So that's information that you could have
23 used in your investigation before arriving to your
24 conclusion; correct?

25 A. Correct.

1 Q. But, as you sit here today, you just
2 don't remember whether that was provided to you?

3 A. Correct.

4 Q. If it had been provided to you, Dr. Lyon,
5 would that have been something you would have noted
6 in your files?

7 A. No.

8 Q. You wouldn't have noted it anywhere?

9 A. If there were foam coming from the nose
10 and mouth at the time I examined the body, I record
11 that in my report.

12 Q. Okay. Understood. And you obviously --
13 you didn't see any because they were deceased?

14 A. Correct.

15 Q. What I want to know is if the detective
16 told you that your decedents, Kirby Brown and James
17 Shore, were seen foaming at the mouth, that's
18 something that would have made an impression on
19 you?

20 A. Yes.

21 Q. So you would have included that; correct?

22 A. In the information that I took all
23 together to arrive at my opinion, yes.

24 Q. And that is nowhere found in your
25 findings contained in the autopsy report; correct?

1 A. Correct.

2 Q. Did anyone ever tell you from the
3 investigation that people were seen with pinpoint
4 pupils at the scene?

5 A. I don't recall.

6 Q. So no one has told you, for example, that
7 Liz Neuman, the other decedent, had pinpoint pupils
8 at the scene?

9 A. Not that I recall.

10 Q. Did anyone ever tell you that Stephen Ray
11 had pinpoint pupils?

12 A. Not that I recall.

13 Q. Or Sidney Spencer?

14 A. No.

15 Q. Or Tess Wong?

16 A. No.

17 Q. Again, pinpoint pupil is the kind of
18 physical symptom that you would have put under
19 medical facts?

20 A. I would have read it and incorporated it
21 into the information that I used.

22 Q. And that isn't seen in your autopsy
23 report because you didn't get that information;
24 correct?

25 A. I don't put the size of the pupil in my

1 **autopsy reports. They can change in size after**
2 **death.**

3 **Q.** And I want to ask you that. But what I'm
4 getting at is, in your report you did contain --
5 you did include in your summary a recitation of the
6 circumstances provided to you by the investigator;
7 correct?

8 **A. Correct.**

9 **Q.** And in that recitation of the
10 circumstances, there is no mention of frothy sputum
11 or foaming?

12 **A. Correct.**

13 **Q.** There is no mention of pinpoint pupils?

14 **A. Correct.**

15 **Q.** And do you know whether or not pinpoint
16 pupils considered by the kind of doctors you think
17 are better qualified to treat a live patient --
18 that those doctors consider to be a red flag for
19 toxidrome?

20 **A. Yes.**

21 **Q.** And you don't dispute that; correct?

22 **A. No.**

23 **Q.** If you had been told that Liz Neuman, for
24 example, and the other critically ill people had
25 pinpoint pupils, that would have been important

1 information for you to have had?

2 **A. Correct.**

3 **Q.** Before you reach the conclusion?

4 **A. Correct.**

5 **Q.** During the time that you had your
6 investigation going from October 9th to
7 February 2nd, did anyone from the state, either the
8 county attorney's office or Detective Diskin's
9 department, ever tell you that night on October 8
10 they took a statement by the person who heated the
11 rocks, and that person said he believed he burned
12 the wrong wood? Were you ever told that?

13 **A. I don't recall that.**

14 **Q.** You don't recall anyone telling you that
15 a statement was taken that night, the night before
16 you did your autopsy, that a person said they might
17 have burned treated wood?

18 **A. I don't recall.**

19 **Q.** Would that have been important
20 information for you to have had?

21 **A. Yes.**

22 **Q.** Why is that, Doctor?

23 **A. Well, perhaps there were some toxins or**
24 **something in the wood that was set aside for**
25 **something other than burning.**

1 **Q.** Okay. And you know treated wood contains
2 a compound called "copper chromium arsenic," CCA;
3 Correct?

4 **A. No. I know treated wood is not to be**
5 **burned and inhaled.**

6 **Q.** Okay. But beyond that, that's what you
7 know?

8 **A. Correct.**

9 **Q.** Now, that would have been important
10 information for you to have. I'm not suggesting
11 that anyone died of CCA or treated wood. But as
12 the medical examiner investigating these deaths,
13 you should have had the prerogative -- right? -- to
14 decide what to test and what not to test; correct?

15 **A. Correct.**

16 **Q.** And so if somebody came to you the night
17 before you did your autopsy, you could have sent
18 out blood samples for the determination of whether
19 or not there was a toxin in connection with the
20 wood; correct?

21 **A. Yes.**

22 **Q.** That wasn't provided to you?

23 **A. Not that I recall.**

24 **Q.** Did anyone from the state, county
25 attorney or the detectives, tell you the night

1 before you did your autopsy or even days after that
2 that same person who said he burned the wrong wood
3 also said --

4 **MR. HUGHES:** Objection, Your Honor. Misstates
5 the -- first of all, it's not in evidence. But it
6 misstates, when it does come in evidence, what's
7 going to be said. I would object to the form of
8 the question. It assumes facts not in evidence.

9 **MS. DO:** I'll rephrase, Your Honor.

10 **THE COURT:** Sustained as to form.

11 **Q.** BY MS. DO: My question to you, Dr. Lyon,
12 is did anyone ever tell you before you reached your
13 conclusion that this was heat stroke, that someone
14 believed that the materials used in the sweat lodge
15 ceremony had been stored with rat poison?

16 **A. No.**

17 **Q.** That was not information given to you at
18 any time during the four months you were
19 investigating these deaths; correct?

20 **A. Correct.**

21 **Q.** The first time any mention of rat poison
22 has been made to you is when?

23 **A. Yesterday or the day before.**

24 **Q.** By whom?

25 **A. Mr. Hughes.**

1 A. Our investigator contacted me and told me
2 that somebody had requested that organophosphates
3 be tested for. And I said okay.
4 Q. And that was two weeks ago?
5 A. I don't remember how long ago it was.
6 Q. Let me -- have you seen a copy of the
7 report?
8 A. Yes.
9 Q. And so you got a call from someone in
10 your office -- an investigator -- requesting that
11 the blood samples of Kirby Brown and James Shore be
12 sent out for organophosphate testing?
13 A. Yes.
14 Q. Do you know whether that request
15 originated with Ms. Polk's office?
16 A. Not for sure.
17 Q. Would that be normal for the county
18 attorney to request testing in an ongoing case?
19 A. If new information came to light that
20 organophosphates may have played a part, then I
21 would expect to be notified and then the test done.
22 Q. And so you were notified two weeks ago?
23 A. I don't recall how long ago it was.
24 Q. Okay. Let me --
25 MS. DO: Your Honor, Mr. Hughes has agreed to

1 moving into evidence Exhibit 811.
2 THE COURT: Exhibit 811 is admitted.
3 (Exhibit 811 admitted.)
4 MS. DO: Thank you.
5 Q. Dr. Lyon, would you take a look at that
6 two-page document and tell me if you recognize it
7 to be test results generated from AIT Laboratories
8 in Indiana?
9 A. Yes.
10 Q. That's the lab we spoke about earlier?
11 A. Yes.
12 Q. The same lab you used to test for illicit
13 drugs?
14 A. Yes.
15 Q. And the vitreous for dehydration?
16 A. Correct.
17 Q. Is that the lab that you then directed
18 whomever to send additional blood samples for
19 testing of organophosphates?
20 A. Yes.
21 Q. Looking at that report, does it give you
22 an indication of when those results returned?
23 A. No.
24 Q. Is it at least the month of
25 February 2010 -- I'm sorry -- 2011?

1 A. Yes.
2 Q. And I'm not sure if you can read -- I
3 know the copy is not so great. Is it February 8,
4 2011?
5 A. That was the date they received the
6 specimen.
7 Q. So then on or about that date would have
8 been the request to send it out; correct?
9 A. Correct.
10 Q. And then February 8th is when the lab in
11 Indiana received it?
12 A. Correct.
13 Q. And the result, as Mr. Hughes asked you
14 that one question earlier, was that none was
15 detected; correct?
16 A. Correct.
17 Q. Did Mr. Hughes tell you whether or not
18 the lab technician who ran that test told them that
19 it was too late to have a reliable test for
20 organophosphates because it's been too long?
21 A. Yes.
22 Q. And that information wasn't asked of you
23 under direct examination for this jury, was it?
24 A. No.
25 Q. If somebody had come to you the day you

1 did your autopsy or perhaps even the day you sent
2 out the initial labs for dehydration and drugs on
3 October 13, that there was a statement suggesting
4 organophosphates as a possible cause, what would
5 you have done at that moment?
6 A. That would have been included in the test
7 request.
8 Q. And that would have been necessary for
9 you to rule that out; right?
10 A. Correct.
11 Q. Now, do you know -- I know Mr. Hughes has
12 told you that that lab has told him it's just too
13 late now. Do you know that independently that
14 organophosphates stay in the blood but for a couple
15 of days?
16 A. No. I don't recall that.
17 Q. All right. But you would agree with me
18 that whatever substance, whatever toxin, you want
19 to look for, the sooner the better?
20 A. Correct.
21 Q. You can't wait?
22 A. It's best not to.
23 Q. Now, you said to this jury that because
24 you weren't given that information, you didn't test
25 at the relevant time; correct?

1 A. Correct.

2 Q. And because you didn't test at the
3 relevant time, you cannot exclude organophosphates
4 as a cause?

5 A. Correct.

6 Q. So let me sum up. And thank you for your
7 patience, Doctor. Okay. So nothing in your
8 autopsy to tell you that it's heat stroke; correct?

9 A. Correct. Other than it's a negative
10 autopsy.

11 Q. Understood. No evidence of dehydration;
12 correct?

13 A. Correct.

14 Q. For any of the decedents, to your
15 knowledge; correct?

16 A. Correct.

17 Q. No evidence of an elevated core
18 temperature; correct?

19 A. Well, I thought you said Ms. Neuman had
20 an elevated temperature of 100.

21 Q. Sure. James Shore and Kirby Brown did
22 not have evidence of an elevated core temperature?

23 A. Correct.

24 Q. Ms. Neuman, assuming you had a chance to
25 review the records, showed 101.7 at 6:46 p.m. That

1 would not be consistent with other professionals
2 who believe it's 104 that's a threshold for heat
3 stroke; correct?

4 A. Correct.

5 Q. You must rule out other causes in order
6 to rule in heat stroke; correct?

7 A. Correct.

8 Q. You were not given or you were deprived
9 the opportunity to test for organophosphates at the
10 time that it mattered; correct?

11 A. Correct.

12 Q. So you didn't test?

13 A. Correct.

14 Q. Or for any other toxin for that matter?

15 A. Correct.

16 Q. You weren't told that people at the scene
17 were foaming; correct?

18 A. Not that I recall.

19 Q. You weren't told that anyone had pinpoint
20 pupils; correct?

21 A. Not that I recall.

22 Q. And since you have to rule out other
23 causes of death, Dr. Lyon, with all the information
24 that you were not given, what does that do to the
25 conclusion you rendered at 51 to 49?

1 A. I'm told when information comes to light,
2 I would keep my -- that opinion.

3 Q. Okay. So you're still at 51, 49;
4 correct?

5 A. Correct.

6 Q. But if you had this information on
7 October 9th, October 11th, or the 12th, you could
8 have done other things to make this more certain;
9 correct?

10 A. Correct.

11 Q. Since you cannot rule out
12 organophosphates, Dr. Lyon, you cannot say with any
13 degree of certainty that it is heat stroke in this
14 case; correct?

15 A. In my opinion, to the degree of certainty
16 is 50 percent or more.

17 Q. 50 percent or more?

18 A. Correct.

19 Q. And so if we had done what we needed to
20 do on October 9, we could be at some point better
21 than 50 percent?

22 A. Correct.

23 Q. Thank you.

24 I have nothing further, Your Honor.

25 THE COURT: Thank you, Counsel.

1 Mr. Hughes?

2 MR. HUGHES: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. HUGHES:

5 Q. Doctor, I'm going to try and address some
6 of the points that Ms. Do brought up. First of
7 all, you were asked whether any detectives were
8 present at the autopsy. Do you recall that?

9 A. Yes.

10 Q. Do you know whether it's common, at least
11 in Yavapai County, for detectives to attend
12 autopsies of suspicious death?

13 A. It is common.

14 Q. How about in Maricopa County?

15 A. It's common there too.

16 Q. And you've mentioned you were a medical
17 examiner in Texas?

18 A. Correct.

19 Q. I don't know the answer to this. But do
20 detectives in Texas attend autopsies as well?

21 A. Yes.

22 Q. You were asked by Ms. Do whether
23 Detective Diskin was personally present at the
24 autopsy. Do you remember that?

25 A. Yes.

1 medical records and whether you would defer to his
2 treating doctor or not?

3 **A. Correct.**

4 **Q.** Did you perform an autopsy on
5 Mr. Mehravar?

6 **A. No.**

7 **Q.** Do you know whether he was deceased or
8 not?

9 MS. DO: Objection, Your Honor. We'll
10 stipulate that he wasn't.

11 THE COURT: There is a stipulation.

12 MR. HUGHES: I'm not asking if he was.

13 **Q.** Did you know whether he was or wasn't?

14 **A. As I recall, there were three deaths.**

15 **And he wasn't one of them.**

16 **Q.** You were asked if you had seen the
17 record. And you said, I think, maybe or you
18 couldn't recall. Do you have a clear recollection
19 today of the records that you reviewed prior to
20 making your determination?

21 **A. Yes.**

22 **Q.** And what records did you review prior to
23 making your determination?

24 **A. Kirby Brown and James Shore's medical**
25 **records.**

1 **Q.** And do you believe you may have reviewed
2 other records as well?

3 **A. Yes.**

4 **Q.** And do you have a clear recollection what
5 those other records may have been?

6 **A. No.**

7 **Q.** At the time you had performed the autopsy
8 on Ms. Brown and Mr. Shore, did you have the
9 ability at that time to -- first of all, did you
10 know at that time other people had gone to the
11 hospital who had not died?

12 **A. Yes.**

13 **Q.** If you had needed to or wanted to, could
14 you have subpoenaed those records from those other
15 people?

16 **A. Yes.**

17 **Q.** And if you needed to or wanted to, could
18 you have called up and talked to their doctors?

19 **A. Yes.**

20 **Q.** And, Doctor, I'm missing an exhibit. I'd
21 like to see if you have it. Turning your attention
22 to Exhibit 192, do you remember Ms. Do asking you
23 questions about that exhibit?

24 **A. Yes.**

25 **Q.** And Ms. Do, I believe, asked if you would

1 defer to that doctor saying he couldn't determine a
2 cause for the patient's symptoms?

3 **A. Correct.**

4 **Q.** Do you know whether the patient was able
5 to tell the doctor what the circumstances were in
6 that sweat lodge?

7 **A. No.**

8 **Q.** Do you know if he was able to tell the
9 doctor how hot it had been in the sweat lodge?

10 **A. No.**

11 **Q.** How humid?

12 **A. No.**

13 **Q.** How long?

14 **A. No.**

15 **Q.** Do you even know whether the patient had
16 told the doctor -- and that was Dr. Furrey?

17 **A. Correct.**

18 **Q.** If the patient had told Dr. Furrey
19 whether the patient could even recall what had
20 happened?

21 **A. No.**

22 **Q.** Do you know whether the patient could
23 recall or not was documented in that first part of
24 that exhibit Ms. Do showed you?

25 **A. No.**

1 **Q.** Turning your attention, then, to Bates
2 No. 1808 on Exhibit 192. Is that something that's
3 documented on that page?

4 **A. Yes.**

5 **Q.** At the time you performed the autopsy on
6 Kirby Brown, did you see any foam in her mouth?

7 **A. No.**

8 **Q.** Have you seen foam in the mouth of
9 patients that you've performed autopsies on?

10 **A. Yes.**

11 **Q.** Is that something you would normally
12 record in your autopsy report if you'd seen it?

13 **A. Yes.**

14 **Q.** At the time you performed the autopsy on
15 Mr. Brown, did you see any foam in his mouth?

16 **A. Which one are we talking about?**

17 **Q.** I'm sorry. Mr. Shore.

18 **A. Yes.**

19 **Q.** Did you see foam in his mouth?

20 **A. Yes.**

21 **Q.** Can you tell us what your report
22 documents as far as the foam that you saw in
23 Mr. Shore's mouth?

24 **A. The mouth contains a moderate amount of**
25 **pink foam.**

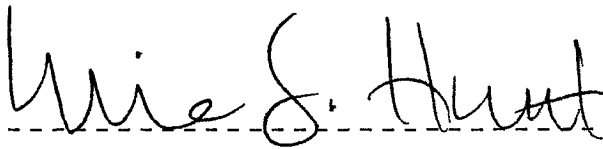
1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)
4

5 I, Mina G. Hunt, do hereby certify that I
6 am a Certified Reporter within the State of Arizona
7 and Certified Shorthand Reporter in California.

8 I further certify that these proceedings
9 were taken in shorthand by me at the time and place
10 herein set forth, and were thereafter reduced to
11 typewritten form, and that the foregoing
12 constitutes a true and correct transcript.

13 I further certify that I am not related
14 to, employed by, nor of counsel for any of the
15 parties or attorneys herein, nor otherwise
16 interested in the result of the within action.

17 In witness whereof, I have affixed my
18 signature this 11th day of April, 2011.
19
20
21

22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3

4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant.)
9 _____)

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14
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE WARREN R. DARROW
17 TRIAL DAY TWENTY-EIGHT
18 APRIL 6, 2011
19 Camp Verde, Arizona
20

21
22 **COPY**

23
24 REPORTED BY
25 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 THE COURT: Okay. And there may need to be
2 limiting instructions on that.

3 I've said this before, too. There's no
4 summary judgment in criminal actions. There are
5 Rule 20 motions. And I'll address that in the
6 context of duty.

7 I have made clear, I think, there has to
8 be a finding of the duty for an omission that lies
9 outside the criminal statute that's relied on. At
10 the same time, there's no mechanism to implement
11 that other than a Rule 20, essentially, once the
12 matter is at trial. So that's noted.

13 With regard to the First Amendment, I've
14 indicated that in the context of duty, words have a
15 whole different meaning. And I don't want to give
16 hypotheticals. You can think about it, and you can
17 think of a number of hypotheticals. When in the
18 context of a legal duty, somebody makes a
19 representation that somebody else relies on, it's
20 not protected speech.

21 The questions with regard to
22 foundation -- those are questions of weight. As I
23 said, there's not a summary judgment mechanism
24 that's available in this context.

25 So the motion for mistrial is denied.

1 Mr. Kelly.

2 MR. KELLY: Judge, what we would request right
3 now is a brief stay in the jury trial for various
4 reasons. One is I don't believe that we're
5 prepared to go forward given the Court's recent
6 ruling in regards to the cross-examination of the
7 proposed witnesses.

8 I'll provide a simple example. I'm going
9 to cross-examine Debbie Mercer. When she and her
10 transcript of the November testimony spoke of prior
11 act evidence, I skipped over it. When I say "prior
12 act evidence," from the evidence relating from
13 prior sweat lodges. I skipped over that.

14 So in good faith, I don't believe that
15 any of us are prepared to proceed at this point in
16 time given our ethical responsibility to represent
17 Mr. Ray.

18 Secondly and more importantly, Judge, we
19 intend to discuss the propriety of filing a special
20 action to challenge your ruling this morning. And
21 I would ask you to think of this, Judge. If, in
22 fact, that special action were to prevail and the
23 witnesses continue to testify -- well, let me
24 rephrase it.

25 If in the special action we challenged

1 your ruling and the higher court overruled it, in
2 the meantime witnesses were allowed to testify,
3 then we would automatically have a mistrial.

4 So I think the wisdom would dictate that
5 there would be a break in the trial today to allow
6 us to consult as to the propriety of filing a
7 special action.

8 Of course, if we did file the complaint
9 for special action, it would articulate the reasons
10 for the requested stay. But as I stand here today
11 at 10:30 in the morning, we're caught off guard and
12 believe that that's the best we can do.

13 I know, Judge, that within -- after
14 listening to your explanation a moment ago in
15 response to the motion for a mistrial, within a
16 couple of hours, we could notify the Court whether
17 we intended to file the special action. I would
18 say by probably 1:00 or 1:30. Then, of course,
19 there's the actual filing of the brief -- the
20 pleading itself.

21 So that's our request, Judge, is to
22 simply, at least for -- between now and 1:30, to
23 stay these proceedings to allow us to consult.
24 Because we're completely caught off guard. I don't
25 want to reiterate the arguments of Mr. Li, but I

1 was the one that handled the witness Fawn Foster.
2 I heard the representations that was made as to the
3 purposes of this evidence. I listened to your
4 responses. We came prepared today consistent with
5 your responses last Friday, and now we're caught
6 off guard.

7 So whether -- you know -- I'm not
8 implying that that's your fault or anyone else's.
9 It's just simply the fact of the matter. We were
10 proceeding in this case along one course that none
11 of these prior incidents would ever be mentioned;
12 and then all of a sudden, now today they are.

13 And we'll have a witness here in a few
14 minutes -- in fact, the next three or four or five
15 witnesses are all going to discuss those prior
16 sweat lodge incidents.

17 So we'd ask for a brief stay and perhaps
18 longer, if we have more time to consult.

19 THE COURT: Mr. Hughes.

20 MR. HUGHES: Thank you, Your Honor.

21 Your Honor, the state opposes a stay.
22 The issue of whether this evidence could come in
23 for causation purposes was addressed by the Court
24 and the parties early on in March. And the Court
25 made the determination that if there was the

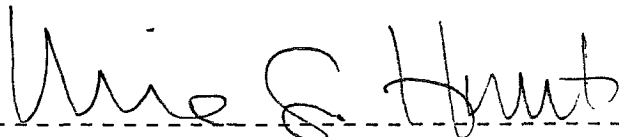
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

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12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 17th day of April, 2011.

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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6)
6 vs.) Case No. V1300CR201080049
7)
7 JAMES ARTHUR RAY,)
8)
8 Defendant.)
9)
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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R. DARROW

16 TRIAL DAY THIRTY

17 APRIL 8, 2011

18 Camp Verde, Arizona
19
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23
24 REPORTED BY
25 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 **A. I could tell what direction it was coming**
2 **from, but I couldn't see the person or see who they**
3 **were talking about.**

4 **Q. I'm going to put up on the overhead**
5 **Exhibit 414. Will you indicate for the jury the**
6 **direction that that conversation came from.**

7 **A. Okay. I was here. The first**
8 **conversation was in this area.**

9 **Q. And where was Mr. Ray?**

10 **A. Right here.**

11 **Q. You testified that it was a male voice**
12 **that you heard say -- are you sure it was a male**
13 **voice, first of all?**

14 **A. I'm pretty sure.**

15 **Q. And what did you hear that person say?**

16 **A. That so-and-so -- they said their name --**
17 **isn't doing so well.**

18 **Q. Do you recall today what the name was?**

19 **A. No. I'm really bad with names. I'm**
20 **sorry.**

21 **Q. And how do you know that it was Mr. Ray**
22 **who responded to that voice?**

23 **A. I was next to him.**

24 **Q. And did you actually see Mr. Ray speak?**

25 **A. I can't say I was looking at him, but I**

1 **heard his voice, and it came from the area he was**
2 **sitting. So yeah.**

3 **Q. And what did he say?**

4 **A. He said that she'd been down the road**
5 **before -- something to the effect of that she'd**
6 **been down the road before and that she'd be okay --**
7 **or she's where she needs to be.**

8 **Q. Did you respond in any way?**

9 **A. No.**

10 **Q. Did that concern you?**

11 **A. Yes.**

12 **Q. At the time?**

13 **A. Yes.**

14 **Q. And did you do anything?**

15 **A. No.**

16 **Q. And why not?**

17 **A. James Ray is in charge of the lodge and**
18 **the people in the lodge.**

19 **Q. And after Mr. Ray said that she knows**
20 **what she's doing, how soon after that were you**
21 **asked to close the door?**

22 **A. I can't say exactly, but it was normal**
23 **interval. So six to eight minutes.**

24 **Q. Did you ever hear any conversations from**
25 **within the sweat lodge about a person needing to**

1 use the bathroom?

2 **A. Yes.**

3 **Q. About when did you hear that?**

4 **A. Second or third round.**

5 **Q. And tell the jury what you remember about**
6 **that.**

7 **A. I remember a fellow saying, James, I**
8 **should have asked you this ahead of time. But what**
9 **do we do if we have to go to the bathroom?**

10 **Q. And did Mr. Ray respond?**

11 **A. Yes, he did.**

12 **Q. What do you recall him saying?**

13 **A. Let it go where you're at.**

14 **Q. Did you hear anything more?**

15 **A. No. I was -- well, can I elaborate? I**
16 **was surprised because usually we take them**
17 **somewhere to go to the bathroom.**

18 **Q. For other sweat lodge ceremonies?**

19 **A. Yeah. Even, like, a 2007 I walked**
20 **somebody to the bathroom who asked to go to the**
21 **bathroom. But this time I heard him tell them to**
22 **pee in the lodge.**

23 **Q. So for a -- the 2007 ceremony facilitated**
24 **by Mr. Ray, you assisted someone to use the**
25 **bathroom?**

1 **A. Yes. A girl.**

2 **Q. You testified about hearing Mr. Ray**
3 **encourage people with expressions -- with phrases**
4 **such as, you're more than that. How often did you**
5 **hear Mr. Ray say that for this 2009 ceremony?**

6 **A. Very often. More than in the previous**
7 **sweat lodges.**

8 **Q. Okay. Did you hear it throughout the**
9 **entire ceremony?**

10 **A. Yes.**

11 **Q. At some point did you later -- did you**
12 **come to know a person named James Shore?**

13 **A. Yes.**

14 **Q. And, Ms. Mercer, do you recall whether**
15 **you ever observed Mr. Shore do anything during the**
16 **ceremony?**

17 **A. Yes.**

18 **Q. What round was that?**

19 **A. Sixth or seventh.**

20 **Q. Tell the jury what you recall.**

21 **A. He drug somebody to the door for me to**
22 **take further.**

23 **Q. How do you know it was Mr. Shore that**
24 **you're talking about?**

25 **A. I remember the face.**

1 Q. Do you know who it was that Mr. Shore
2 brought to the door?
3 A. No.
4 Q. And was it male or female?
5 A. **Couldn't tell you.**
6 Q. How close to the door did Mr. Shore bring
7 that person?
8 A. **He came from this way and to the -- right**
9 **about here.**
10 Q. And what did you do then?
11 A. **And then I took the person from him and**
12 **took him outside.**
13 Q. Where did you take the person?
14 A. **Over to that -- to that same area on --**
15 **on the tarps.**
16 Q. Was that person alert?
17 A. No.
18 Q. Describe to the jury what you remember
19 about the person that Mr. Shore brought to the
20 door.
21 A. **I don't remember anything other than a**
22 **person that -- them being passed out and me moving**
23 **them over there.**
24 Q. And after you dragged them over to a side
25 away from the door, what did you do?

1 A. **I went back to the door to see if there**
2 **was anymore -- I think someone else came out after**
3 **that, and James went back in.**
4 Q. James Shore?
5 A. Yes. James Shore.
6 Q. Did you see James Shore as he went back
7 in?
8 A. Yeah.
9 Q. And did you see anything in particular
10 about him?
11 A. **I know -- well, when he got to this point**
12 **when he was bringing someone, he knocked his head**
13 **on a tree -- on the top of a -- because he tried to**
14 **stand up and he knocked his head. So he had a**
15 **little scratch on his head.**
16 Q. Where was Mr. Ray when you saw Mr. Shore
17 bump his head?
18 A. Right here.
19 Q. As you took the person from James Shore,
20 did you see what James Shore did?
21 A. No. I don't recall.
22 Q. After bumping his head, did James Shore
23 come out of the sweat lodge?
24 A. **I remember seeing him go back in. I**
25 **think he -- my recollection is he went -- he never**

1 **came out totally out right then. He went back in.**
2 **And I don't -- I don't remember him out -- in here.**
3 **I remember him in here.**
4 Q. Okay. Did you hear anymore conversations
5 coming from the sweat lodge during the ceremony?
6 A. Yes.
7 Q. And tell the jury what else you heard.
8 A. **Before the last round -- before the last**
9 **round, I heard somebody in this area over here -- I**
10 **heard him say so-and-so is not breathing or they're**
11 **not responding. I can't get him to respond.**
12 Q. Do you recall if that was a male or a
13 female voice saying so-and-so is not breathing?
14 A. I can't recall.
15 Q. Do you recall if that voice used the name
16 of the person who was not breathing?
17 A. Yeah. They did.
18 Q. Do you remember the name?
19 A. No.
20 Q. What do you recall the person saying
21 about someone not breathing?
22 MR. KELLY: Your Honor, objection. Misstates
23 her testimony. The response was "not responding."
24 THE COURT: Overruled.
25 Q. BY MS. POLK: You can go ahead and

1 answer.
2 What do you recall the voice saying that
3 you heard from this area?
4 A. **I'm sorry. I'm getting emotional. I**
5 **remember them saying -- I can't recall right now.**
6 **My brain -- can I review my transcript or**
7 **something?**
8 Q. You can. Would you -- do you -- would
9 you like to take a little break?
10 A. **Yeah. I think my brain is getting fried.**
11 THE COURT: We'll take a recess.
12 Ladies and gentlemen, we'll go ahead and
13 take an afternoon recess. Again, we'll probably be
14 recessing a little bit before 4:00, in any event.
15 So please be back in 15 minutes. Remember the
16 admonition.
17 Ms. Mercer, just remember that rule of
18 exclusion.
19 Thank you. We're in recess.
20 (Recess.)
21 (Proceedings continued outside presence
22 of jury.)
23 THE COURT: The record will show the presence
24 of Mr. Ray and the attorneys.
25 Mr. Kelly.

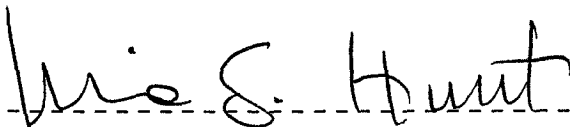
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3 COUNTY OF YAVAPAI)

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15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 19th day of April, 2011.

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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant.)
9 _____

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R. DARROW

16 TRIAL DAY THIRTY-THREE

17 APRIL 20, 2011

18 Camp Verde, Arizona
19
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25 AZ CR NO. 50619
 CA CSR NO. 8335

1 **accident.**
 2 **Q.** Let's make it clear to the jury. You
 3 were never inside the sweat lodge in October
 4 of 2009; correct?
 5 **A. Correct.**
 6 **Q.** You were always outside; correct?
 7 **A. Yes.**
 8 **Q.** You told Ms. Polk that the fire didn't
 9 affect you; correct?
 10 **A. Correct.**
 11 **Q.** You told us that there was a care station
 12 where you could get water if you needed water;
 13 correct?
 14 **A. Yes.**
 15 **Q.** And I saw your husband, in fact, drinking
 16 out of a quart bottle of water. Do you see that?
 17 **A. Yes.**
 18 **Q.** So we have plenty of water, nice day in
 19 October of 2009 in Sedona, Arizona; correct?
 20 **A. Correct.**
 21 **Q.** So you were not subjected to the heat
 22 inside the sweat lodge; correct?
 23 **A. Correct.**
 24 **Q.** You were not subjected to the humidity
 25 inside the sweat lodge; correct?

1 **A. Correct.**
 2 **Q.** And it was on that day within several
 3 hours of the sweat lodge that you made this
 4 statement to the detective that all you could hear
 5 is moaning and groaning. James will tell you to
 6 slow your breathing down. And that's normal.
 7 Correct?
 8 **A. Correct.**
 9 **Q.** And you on that day did not participate
 10 in the JRI seminar; correct?
 11 **A. Correct.**
 12 **Q.** So you weren't subject to the Samurai
 13 Game, as an example; correct?
 14 **A. No.**
 15 **Q.** You didn't have to go on the Vision
 16 Quest; correct?
 17 **A. Correct.**
 18 **Q.** You did not have to eat the vegetarian
 19 diet?
 20 **A. No.**
 21 **Q.** You didn't have to go through the
 22 Holotropic breathing; correct?
 23 **A. Excuse me?**
 24 **Q.** You didn't have to engage in Holotropic
 25 breathing; correct?

1 **A. No.**
 2 **Q.** You didn't have to undergo any type of
 3 meditation; correct?
 4 **A. No.**
 5 **Q.** So when you showed up in October of 2009,
 6 your sole purpose was to assist your husband in
 7 running the sweat lodge; correct?
 8 **A. Yes.**
 9 **Q.** And you told us that this interview took
 10 place within several hours of the sweat lodge
 11 event?
 12 **A. Yes.**
 13 **Q.** And you were telling the truth; right?
 14 **A. I usually tell the truth. Yes.**
 15 **Q.** Of course you were. And you were the
 16 person -- we went through this. You were the
 17 person that was operating that door on that day;
 18 correct?
 19 **A. Yes.**
 20 **Q.** And you knew that if somebody was dying
 21 inside of that sweat lodge, you would have left
 22 that door open or you would have drug him out or
 23 you would have talked to James or you would have
 24 talked to your husband. You would have done
 25 something; correct?

1 **A. Yes.**
 2 **Q.** Now I'm going to put 145 back up.
 3 We don't know which particular round this
 4 is; correct?
 5 **A. No.**
 6 **Q.** But you told us that James would call for
 7 the number of rocks after a round?
 8 **A. Yes.**
 9 **Q.** And then your husband would retrieve them
 10 from this fire, take them over to the location,
 11 which is at his feet now.
 12 Maybe Ms. Do can blow that up.
 13 Do you see those flagstone rocks there?
 14 **A. Yes.**
 15 **Q.** And I guess your husband, then, would
 16 place the volcanic rocks on top of these rocks.
 17 Correct?
 18 **A. Yes.**
 19 **Q.** And then Rotillo was the duster. He
 20 would dust them off; correct?
 21 **A. No.**
 22 **Q.** Who would dust them off?
 23 **A. Either myself or Sarah. Ted and Rotillo**
 24 **got the rocks out of the fire and put them on the**
 25 **rocks -- on those rocks. And then Sarah or I would**

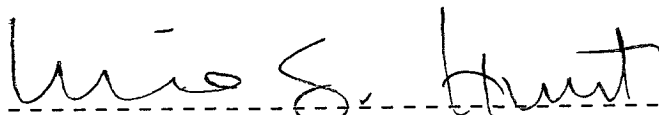
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16 In witness whereof, I have affixed my
17 signature this 27th day of April, 2011.
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24 MINA G. HUNT, AZ CR No. 50619
 CA CSR No. 8335
25

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.) Case No. V1300CR201080049
)
 JAMES ARTHUR RAY,)
)
 Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY THIRTY-SIX
APRIL 26, 2011
Camp Verde, Arizona

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AZ CR NO. 50619
CA CSR NO. 8335

<p style="text-align: right;">13</p> <p>1 not trying to -- to argue that issue. The issue</p> <p>2 that I'm asking the Court to reconsider is allowing</p> <p>3 the state to present through the testimony of</p> <p>4 Amayra Hamilton and additional witnesses the</p> <p>5 information that goes to causation. And that</p> <p>6 specifically would be the events in 2005 and some</p> <p>7 additional information with respect to 2007</p> <p>8 and 2008.</p> <p>9 THE COURT: This Court made a distinction at</p> <p>10 the time of the 404(b) ruling about the effects</p> <p>11 that were apparent after prior sweat lodges and the</p> <p>12 effects that were apparent after the 2009 sweat</p> <p>13 lodge. There is, essentially, a distinction in</p> <p>14 kind, not just agreed.</p> <p>15 I've talked repeatedly about propensity</p> <p>16 evidence and the danger of just having cumulative</p> <p>17 evidence that might go to causation in a</p> <p>18 circumstantial way become the focus of the trial</p> <p>19 rather than the events of 2009.</p> <p>20 I have not stricken the testimony that</p> <p>21 has been admitted so far. And as I've indicated</p> <p>22 before, that's hours of testimony. The defense</p> <p>23 says days. That's not been stricken because it's</p> <p>24 conceivable. I don't know what these other experts</p> <p>25 might say, but it's conceivable that there is a</p>	<p style="text-align: right;">15</p> <p>1 the facilities in 2003, 2004, 2005, 2006.</p> <p>2 THE COURT: There is not going to be testimony</p> <p>3 about the -- the Daniel P. matter, as I've referred</p> <p>4 to that incident. And one of the reasons for that</p> <p>5 is just the remoteness.</p> <p>6 MR. LI: We had also understood '07 and '08</p> <p>7 were not going to be at issue. And that's exactly</p> <p>8 the reason why Ms. Do approached the Court at</p> <p>9 sidebar and said, we're not -- we don't want to</p> <p>10 open the door, and limited her questions to, I</p> <p>11 believe, two or three questions. And this Court</p> <p>12 required Ms. Polk to only ask one question about</p> <p>13 the supervision.</p> <p>14 So I just want to make sure that we're</p> <p>15 all clear on what the rules of the road are just so</p> <p>16 I can state what I think where -- where the ball is</p> <p>17 right now.</p> <p>18 THE COURT: It is so hard to determine before</p> <p>19 you hear testimony what potential relevance might</p> <p>20 be. The ruling is is that -- you've stated it</p> <p>21 correctly, Mr. Li. You have.</p> <p>22 MR. LI: Thank you.</p> <p>23 THE COURT: Ms. Polk, I want to -- to make</p> <p>24 sure we have a mutual -- or you have an agreed</p> <p>25 understanding of that ruling.</p>
<p style="text-align: right;">14</p> <p>1 connection causally with that information. So</p> <p>2 the -- the rulings that I've made stand.</p> <p>3 Are there any other legal issues that I</p> <p>4 need to address? I've tried to keep up with a list</p> <p>5 as these things have been filed throughout the</p> <p>6 trial. And I -- and I need to know if there are</p> <p>7 other pending legal issues that need a ruling.</p> <p>8 Ms. Polk.</p> <p>9 MS. POLK: None, Your Honor.</p> <p>10 And I just want to clarify. The Court</p> <p>11 had made it clear in your last ruling that the</p> <p>12 information about what happened on other events</p> <p>13 would be relevant -- could be relevant to other</p> <p>14 issues as well.</p> <p>15 THE COURT: I've always said if there is a</p> <p>16 basis outside the 404(b) justification. That was</p> <p>17 stated at the start.</p> <p>18 MS. POLK: Thank you.</p> <p>19 MR. LI: But just -- just so we're clear,</p> <p>20 though, my understanding of the Court's ruling of</p> <p>21 Friday, I believe, is that we're not going into any</p> <p>22 prior sweat lodge testimony relating to any of it</p> <p>23 other than very limited background on the lines of</p> <p>24 what Mr. Hughes said, that he would just say you</p> <p>25 were -- you know -- you -- Mr. Ray rented the --</p>	<p style="text-align: right;">16</p> <p>1 MS. POLK: Your Honor, I believe we do. There</p> <p>2 will be no testimony about the 2005 incident.</p> <p>3 The -- when -- when Detective Diskin testifies, as</p> <p>4 the Court knows, the defense has -- one of the</p> <p>5 themes of the defense is that very early on</p> <p>6 Detective Diskin focused on Mr. Ray to the</p> <p>7 exclusion of looking at other possible issues.</p> <p>8 And Detective Diskin will testify about</p> <p>9 information he was receiving, including</p> <p>10 information -- he interviewed close to a hundred</p> <p>11 witnesses, including witnesses from prior sweat</p> <p>12 lodges, and that that information helped him form</p> <p>13 on -- on the very issue that I have been addressing</p> <p>14 this morning, which is that when it was Mr. Ray who</p> <p>15 was running the event, there were problems. And so</p> <p>16 that is part of the reason why Detective Diskin,</p> <p>17 then, focuses on the issue of heat and that</p> <p>18 comparison.</p> <p>19 The information would come in briefly,</p> <p>20 then, through Detective Diskin's testimony how his</p> <p>21 investigation included looking at prior sweat</p> <p>22 lodges, looking at ceremonies held by other people,</p> <p>23 and then that's why the direction of the</p> <p>24 investigation took its course.</p> <p>25 THE COURT: I want to get the trial started on</p>

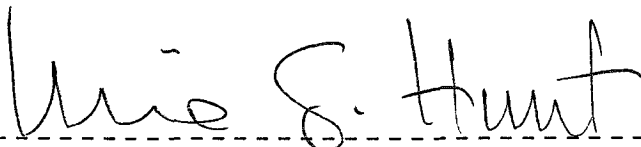
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22 

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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

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2 FOR THE COUNTY OF YAVAPAI

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6 vs.) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant.)
9 _____

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R. DARROW

16 TRIAL DAY FORTY-TWO

17 MAY 6, 2011

18 Camp Verde, Arizona
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21

22 **COPY**

23 REPORTED BY
24 MINA G. HUNT
25 AZ CR NO. 50619
 CA CSR NO. 8335

PROCEEDINGS

THE COURT: The record will show the presence of the defendant, Mr. Ray; the attorneys, the jury. Dr. Mosley has returned to the witness stand.

Ms. Do.

MS. DO: Thank you, Your Honor.

CROSS-EXAMINATION (Continued)

BY MR. DO:

Q. Good morning, Dr. Mosley.

A. Good morning, Ms. Do.

Q. Yesterday before we broke for the day, we were talking about the progression of your thought processes and your opinions; correct?

A. Correct.

Q. And this morning I rewrote that time line so we could all have it on one page. You reached your final conclusion on February 2, 2010; correct?

A. I did reach a final conclusion on February 2, 2010.

Q. And that final conclusion was one in which you rendered an opinion that based upon the circumstantial evidence, Liz Neuman died of multisystem organ failure due to hyperthermia due to exposure of a sweat lodge; correct?

A. I'm not sure you've quoted me exactly

there, Ms. Do. Let me just read to you what I wrote.

Q. Sure.

A. Multisystem organ failure due to hyperthermia due to prolonged sweat lodge exposure.

Q. That was your conclusion on February 2, 2010; correct?

A. Yes.

Q. And it was a conclusion that you reached after four months of conducting the autopsy; correct?

A. I'm sorry, Ms. Do. The autopsy did not take me four months to complete.

Q. I didn't say that, Dr. Mosley. I'm sorry. Let me repeat it in case you misheard.

What I said was, you concluded your report on February 2, 2010, which is some four months after you completed your autopsy; correct?

A. Correct.

Q. Now, on February 2, 2010, when you reached that opinion, you told this jury yesterday that it was -- and I know you used this No. 4 -- 99.8752 percent was based upon the circumstances; correct?

A. I'm embarrassed that I used that number

because it's ridiculous that that is what I said.

Q. Okay. And I'm not going to harp on this. You told the jury yesterday that you sort of pulled that number out of -- you said it was facetious; correct?

A. I did.

Q. But the underlying message is not facetious. And that is that a substantial part of your conclusion was based upon the reported circumstances; correct?

A. Correct.

Q. All right. Now, since February 2, 2010, you had received some additional questions from the state within recent months that then prompted you to reevaluate your thought processes; correct?

A. Correct.

Q. And in reevaluating that, you took another look at Ms. Neuman's medical records?

A. Correct.

Q. And based on your review of Ms. Neuman's medical records, you have reached some doubts about your conclusions; correct?

A. Correct.

Q. And what you saw in Ms. Neuman's medical records, you reached a conclusion that, based upon

your review of her records, there are signs and symptoms inconsistent with heat stroke and hyperthermia; correct?

A. That's correct.

Q. There are signs and symptoms in her medical records that are consistent with toxicity, including organophosphate toxicity; correct?

A. Correct.

Q. What we call a "cholinergic toxidrome"; correct?

A. Correct.

Q. Based upon those signs and symptoms, you've reached an opinion today, as you sit here, that you cannot exclude organophosphates as a contributing cause or a cause of death; correct?

A. That's correct.

Q. Where we left off yesterday was on April 18 and 19 you and I had a telephone conversation with Mr. Hughes present; correct?

A. Correct.

Q. And that telephone conversation was recorded?

A. Okay.

Q. Do you know that?

A. Yes, I do.

1 Q. It's okay. Do you recall me asking you
2 yesterday -- I believe it was around 1:30 p.m. --
3 Dr. Mosley, the opinions you provided to me and
4 Mr. Hughes on April 18 and April 19 -- have you
5 changed those opinions?

6 Do you remember that?

7 A. **Have I changed the opinions?**

8 Q. Let me get an answer first. Did I ask
9 you that question yesterday?

10 A. **I think so.**

11 Q. And your response to that question was
12 no; correct?

13 A. **Yes. I believe that is correct. I**
14 **haven't changed -- what I told you is correct. I**
15 **still believe that Dr. Paul, theoretically, could**
16 **be correct.**

17 Q. About this not being a case of heat
18 stroke but rather a case of poisoning; correct?

19 A. **Heat stroke. I think that both are**
20 **substantial factors in this case. There is a toxic**
21 **mechanism and a hyperthermia mechanism. I think**
22 **both mechanisms are in play here.**

23 Q. Okay. And I appreciate that. I'm going
24 to spend some time with you on that.

25 What you are telling this jury today is

1 that, based upon your reevaluation of the evidence,
2 you do believe that toxicity was in play; correct?

3 A. **Correct.**

4 Q. The toxicity that could be in play based
5 upon the signs and symptoms is organophosphates;
6 correct?

7 A. **That is among the toxicities that are**
8 **possible.**

9 Q. There are others?

10 A. **There are others.**

11 Q. Okay. Now, I'm going to discuss this a
12 little bit more with you. But I just want to make
13 sure that I have your testimony clear as to the
14 time line.

15 A. **Sure.**

16 Q. As of today you are not saying -- let me
17 rephrase that. When you told us on April 18 and 19
18 that Dr. Paul could be right, you are confirming
19 that statement again today; correct?

20 A. **Correct.**

21 Q. Now, when the state provided you with
22 Dr. Paul's report, did they give you any
23 information about who Dr. Paul was?

24 A. **Yes.**

25 Q. Did they tell you that Dr. Paul is a

1 medical examiner for the State of New Mexico?

2 A. **Yes.**

3 Q. Did they tell you that Dr. Paul works in
4 a capacity such as yours where he is a medical
5 examiner for the State of New Mexico?

6 A. **Yes.**

7 Q. Meaning, he works with law enforcement,
8 prosecutors?

9 A. **Yes.**

10 Q. Meaning that he is not somebody who is
11 out there for private hire by criminal defendants;
12 correct?

13 MR. HUGHES: Objection. Misstates the
14 evidence.

15 THE COURT: Sustained.

16 MS. DO: Well, I have a follow-up to that.
17 I'm sorry, Your Honor.

18 Q. What I'm trying to clarify with you,
19 Doctor, is you do understand that Dr. Paul is
20 somebody who works for a state and primarily works
21 with law enforcement and prosecutors; correct?

22 A. **I'm aware of that. Yes.**

23 Q. Did the state also tell you that Dr. Paul
24 has never testified on behalf of a defendant
25 charged in a criminal matter?

1 A. **I did not know that.**

2 Q. Did the state also tell you that Dr. Paul
3 is board certified in both emergency medicine and
4 forensic pathology?

5 A. **They did.**

6 Q. Meaning, he has that extra wealth of
7 information and experience that we talked about
8 yesterday in treating live patients?

9 A. **Yes.**

10 Q. That extra wealth of experience in
11 treating live patients who come in with heat
12 illnesses; correct?

13 A. **Correct.**

14 Q. And poisoning; correct?

15 A. **Yes.**

16 Q. And so based upon the information that
17 the state provided you regarding Dr. Paul's
18 credentials, you have no reason to believe that he
19 is not qualified; correct?

20 A. **None whatsoever. I mean, Mr. Paul's**
21 **credentials are impeccable. I suppose a thorough**
22 **background check to find holes in Mr. Paul's**
23 **credentials might reveal that he's allergic to**
24 **kryptonite and he can't see through lead.**

25 **So I'm aware of that. I was aware of**

1 that when I reviewed his report. I was aware of
2 that before, as I went into rereview of
3 Ms. Neuman's records, that if I were to oppose
4 Dr. Paul, in my opinion, that it would be,
5 essentially, similar to opposing the voice of God.
6 And so it's not a light -- it's not a thing I take
7 lightly when I have an opinion that is divergent
8 from Dr. Paul's.

9 Q. Okay. I appreciate the humor, Doctor.
10 No one is saying that he's Superman, and no one is
11 saying he's God. But what you are telling the
12 jurors is that his credentials are impeccable, that
13 he is qualified; correct?

14 A. Correct.

15 Q. And that if you were to reach an opinion
16 that disagreed with his, it might be intellectually
17 contradictory; correct? Meaning, he as an
18 intellectual -- a medical basis for his opinion;
19 correct?

20 A. Yes. We're all obliged to be
21 intellectually honest. Dr. Paul is. I am. That's
22 what I bring to court, and that's what Dr. Paul
23 will bring to court.

24 Q. Thank you. And, Dr. Mosley, I'm not at
25 all challenging your intellectually -- intellectual

1 honesty. And you were candid with us on April 18
2 and 19. But people can make mistakes; correct?

3 A. Yes, we can.

4 Q. As you told this jury, and I think we all
5 appreciate your candor yesterday, you said that --
6 and I believe your exact words -- I don't want to
7 misquote you -- was something to the effect that
8 you were always open to new opinions and new
9 information; and if you're wrong, you're going to
10 revise your opinion; correct?

11 A. Correct.

12 Q. And that's somewhat what you've done
13 here; correct?

14 A. Yes.

15 Q. And we all appreciate that. So I'm not
16 challenging your intellectual honesty, because
17 you've been candid.

18 Now, let me ask you this next question:
19 You've told the jury now that it is your opinion
20 today that there were signs and symptoms in Liz
21 Neuman's medical records that were inconsistent
22 with heat stroke and hyperthermia and consistent
23 with an organophosphate toxicity. Those two signs
24 and symptoms -- well, let me ask you. How many
25 signs and symptoms are we talking about?

1 A. I'm sorry. We're talking about
2 hyperthermia, heat stroke?

3 Q. Let me clarify. When you reached the
4 opinion that there were signs and symptoms
5 inconsistent with heat stroke but consistent with
6 organophosphates toxicity, what signs and symptoms
7 are we talking about?

8 A. So what we're talking about is a case in
9 which hyperthermia is the sole player. If the only
10 thing going on is exposure to a high temperature
11 and nothing else as the lethal act, what's
12 inconsistent about that are miosis, the pinpoint
13 pupils, and the -- and if that foamy sputum is
14 excessive salivation, then that would be also
15 inconsistent with the early findings of heat
16 stroke, of pure heat stroke.

17 Q. Okay. So let's talk about these two
18 things. You did see documented in Ms. Neuman's
19 medical records evidence that she had miosis,
20 meaning pinpoint pupils?

21 A. Yes. Yes.

22 Q. And your information regarding the frothy
23 sputum or the foaming, as you told this jury, that
24 fact is not documented in the medical records --
25 correct? -- based on your review?

1 A. I'm not sure where I got that impression.
2 I'm not sure.

3 Q. That's okay. What I'm asking, Doctor, is
4 do you recall seeing this documented in Liz
5 Neuman's medical records?

6 A. Yes.

7 Q. You do recall?

8 A. I believe so.

9 Q. That's okay. If you need to review
10 anything to be sure, please do.

11 A. Okay. I don't think I have those facts.

12 Q. If the jury were to have heard testimony
13 from witnesses on that stand that participants
14 after the sweat lodge ceremony did show signs of
15 what they've called "foaming" or "frothy sputum" --

16 A. Yes.

17 Q. -- I want you to accept that just as a
18 hypothetical. All right?

19 A. Okay.

20 Q. So these two signs and symptoms -- the
21 frothy sputum, the foaming; plus the miosis, the
22 pinpoint pupils -- are the two things you know are
23 inconsistent with heat stroke; correct?

24 A. At least in the early phases as someone
25 might present at the scene upon emerging from the

09:41:48AM 1 much you would expect. You indicated to him that
09:41:52AM 2 it's quite possible that you could see the quantity
09:41:54AM 3 that he described as being the foam on a latte;
09:41:54AM 4 correct?

09:41:59AM 5 A. Yes.

09:42:00AM 6 Q. Now, I want you to take those two signs
09:42:01AM 7 and symptoms and put them together rather than
09:42:04AM 8 looking at them separately. You have got miosis,
09:42:04AM 9 pinpoint pupils, and you've got frothy sputum and
09:42:11AM 10 foaming. Those two in conjunction are inconsistent
09:42:13AM 11 with heat stroke; correct?

09:42:15AM 12 A. Yes.

09:42:15AM 13 Q. Those two in conjunction are inconsistent
09:42:18AM 14 with hyperthermia; correct?

09:42:21AM 15 A. Yes.

09:42:22AM 16 Q. Those two in conjunction are consistent
09:42:26AM 17 with organophosphate toxicity; correct?

09:42:29AM 18 A. They are.

09:42:34AM 19 Q. We also talked yesterday -- Mr. Hughes
09:42:38AM 20 asked you something about a differential diagnosis?

09:42:40AM 21 A. Yes.

09:42:40AM 22 Q. And you explained it to the jury. And I
09:42:44AM 23 just want to make sure that I understood your
09:42:46AM 24 explanation. Sometimes a patient can come in and
09:42:51AM 25 exhibit a pattern of signs and symptoms that could

1 **it suggests dehydration.**
 2 **Q.** And I understand that. As part of the
 3 skin changes, you said you would look for tenting;
 4 correct?
 5 **A. Yes.**
 6 **Q.** Tenting would suggest to you dehydration;
 7 correct?
 8 **A. Yes.**
 9 **Q.** In addition to the skin changes, you
 10 could also look at vitreous fluid for dehydration;
 11 correct?
 12 **A. Yes.**
 13 **Q.** You could also look at chemistry that are
 14 done, for example, on Ms. Neuman for electrolyte
 15 disturbances; correct?
 16 **A. Correct.**
 17 **Q.** And in this case, all three of the
 18 decedents, to your knowledge, did not have a
 19 recorded temperature of any of those -- 104, 106,
 20 107 or 108; correct?
 21 **A. Correct.**
 22 **Q.** And so you're making an assumption they
 23 had at one point; correct?
 24 **A. Well, yes. I am.**
 25 **Q.** You're making an assumption?

1 **A. That's correct.**
 2 **Q.** And that assumption is based upon just
 3 the mere fact that there was a sweat lodge;
 4 correct?
 5 **A. Not only that, but that the witnesses who**
 6 **were there said that it was, well, essentially**
 7 **very, very hot.**
 8 **Q.** Correct. You were making an assumption
 9 that the three decedents had the requisite core
 10 temperature for heat stroke or even hyperthermia
 11 based upon the fact it was a hot, heated
 12 environment; correct?
 13 **A. Yes. Hyperthermia has a lower number to**
 14 **call "hyperthermia." You could have pneumonia and**
 15 **be -- well -- and have the same temperature. But**
 16 **it's the circumstances that make it hyperthermia**
 17 **due to -- well, due to something aside from**
 18 **environmental exposure.**
 19 **Q.** Okay. What I'm asking you, Doctor, is
 20 you don't have any objective, hard evidence that
 21 any of these decedents were at 104, 106, 107 or
 22 108; correct?
 23 **A. That's correct.**
 24 **Q.** You are making an assumption that they
 25 did based only on the fact that there was a hot

1 environment; correct?
 2 **A. Correct.**
 3 **Q.** And that hot environment could also be
 4 indicative of a lot of other things; correct?
 5 **A. The hot environment could indicate many**
 6 **other things.**
 7 **Q.** Let me ask you this question.
 8 **A. Sure.**
 9 **Q.** Do you know whether or not toxins -- the
 10 absorption rate of toxins are sped up because of
 11 heat?
 12 **A. The absorption rates are influenced by**
 13 **heat. Sure.**
 14 **Q.** Do you know that? I don't want you to
 15 guess.
 16 **A. Well, I don't know.**
 17 **Q.** So you're not sure whether or not a
 18 heated, humid environment is the perfect
 19 environment to speed up toxins?
 20 **A. Inhale toxins?**
 21 **Q.** It could be inhaled. It could be
 22 aerosolized. It could be in the soil. It could be
 23 through dermal absorption. I have no idea.
 24 What I'm asking you is, if toxins are
 25 present in a hot, humid environment, do you know

1 whether or not that speeds up absorption rates?
 2 **A. I would expect that they would.**
 3 **Q.** Okay. So there could be other
 4 assumptions made about the heat; correct?
 5 **A. Yes.**
 6 **Q.** The skin changes that you talked about,
 7 the tenting evidence of dehydration. Again, in
 8 this case, no evidence of dehydration in any of the
 9 decedents; correct?
 10 **A. That's correct.**
 11 **Q.** And you are, again, making an assumption
 12 based upon the fact that there was a sweat lodge
 13 that they might have been dehydrated; correct?
 14 **A. I don't know if I ever assumed that they**
 15 **were dehydrated. I don't think I did.**
 16 **Q.** Fair to say that that should not be an
 17 assumption made in this case?
 18 **A. I think so. I think that's true.**
 19 **Q.** Because the evidence shows that they were
 20 not at the time of death -- Mr. Brown and
 21 Ms. Shore; correct?
 22 **A. That's correct.**
 23 **Q.** Now, altered mental status, another
 24 criteria for heat stroke. That also could be in
 25 indicative of something else; correct?


1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
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16 In witness whereof, I have affixed my
17 signature this 19th day of May, 2011.

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24 -----
 MINA G. HUNT, AZ CR No. 50619
 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY FORTY-THREE
MAY 10, 2011
Camp Verde, Arizona

COPY

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MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 performed on that chemical?

2 **A. No. This chemical is -- according to**
3 **this is a common thing in different, like, pine**
4 **oils. It's a very common chemical.**

5 **Q.** Now, how about the final chemical
6 mentioned this -- negative terpinen-4-ol?

7 **A. Well, I mean, it's commonly found in tea**
8 **tree oil. The potential health effects can cause**
9 **eye or skin irritation, harmful if swallowed. It**
10 **cause irritation to the digestive tract. It can**
11 **cause respiratory tract irritation and may be**
12 **harmful if inhaled.**

13 **Q.** And was this chemical subjected to an
14 LD50 test?

15 **A. It was. Again, large amounts. 1300 for**
16 **oral -- 1300 milligrams per kilogram for a rat.**
17 **And for skin for a rabbit, it was 25- -- greater**
18 **than 2500 milligrams per kilogram, so a lot.**

19 **Q.** And, Doctor, assuming hypothetically that
20 these items were found in a log that got burned at
21 the scene, would you expect -- how would you expect
22 those chemicals to affect the people who were
23 around the smoke?

24 MS. DO: Objection, Your Honor. Foundation.

25 THE COURT: Sustained.

1 **Q.** BY MR. HUGHES: First of all, would you
2 expect, based on your training and experience, to
3 find trace amounts of wood oils in burned wood
4 smoke?

5 MS. DO: Objection. Foundation and leading.

6 THE COURT: Sustained.

7 **Q.** BY MR. HUGHES: Doctor, if people were --
8 I'm giving you a hypothetical. If people were
9 exposed to wood smoke for a short period of time,
10 say, under 15 minutes, and other people were
11 exposed to the same wood smoke -- smoke for several
12 hours, two hours or more, if there was any toxic
13 substance in the wood smoke, which group would you
14 expect to see succumb to that toxic effect?

15 MS. DO: Objection. Foundation, Your Honor.

16 THE COURT: Sustained as to foundation.

17 **Q.** BY MR. HUGHES: Doctor, in determining
18 how to treat a patient, do you have to review the
19 circumstances of how they become injured?

20 **A. Yes.**

21 **Q.** And how important is that in making a
22 determination -- or an opinion on your part as to
23 what is wrong with the patient?

24 **A. Very important.**

25 **Q.** If you had a patient who came into your

1 department who had been exposed to wood smoke for
2 10 or 15 minutes, and the patient's mother brings
3 the patient, had been exposed to that same wood
4 smoke for several hours without effect, would you
5 consider the wood smoke to be a likely cause of why
6 a patient was presenting in the hospital?

7 MS. DO: Objection. Foundation and leading.

8 THE COURT: It's hypothetical. Overruled.

9 If you can answer that, Dr. Dickson.

10 THE WITNESS: Yes. People that are exposed
11 longer obviously would have symptoms greater than
12 shorter-duration exposure.

13 **Q.** BY MR. HUGHES: Doctor, in reaching the
14 determ- -- the opinions that you've testified to
15 previously about the cause of death for James
16 Shore, Kirby Brown, and Liz Neuman, did you also
17 consider the possibility that -- or did you
18 consider evidence regarding 2007 and 2008 sweat
19 lodges?

20 **A. Yes.**

21 **Q.** And, Doctor, assuming hypothetically a
22 witness in this case -- and I'm talking about lay
23 witnesses. They're not doctors who are trained to
24 make medical diagnosis, but lay witnesses who --
25 who don't have medical backgrounds.

1 Assuming hypothetically a lay witness
2 testified that in 2007 and 2008, they saw people
3 coming out of Mr. Ray's sweat lodge ceremonies with
4 very red skin but they didn't see people coming out
5 of other lodges not run by Mr. Ray with that very
6 red skin, can that be a factor that would help you
7 in determining whether or not toxins were at play
8 in this case?

9 **A. It probably wouldn't be a factor. And**
10 **you can have it in either way. You can have a skin**
11 **irritant that could cause red skin, or being really**
12 **hot can cause red skin.**

13 **Q.** Can -- you mentioned being really hot can
14 cause red skin. Can you explain how that could
15 happen.

16 **A. Well, it's a physiologic response. We**
17 **talked a little bit earlier. It's when your body**
18 **is hot, one of the mechanisms it uses is it dilates**
19 **the arteries and veins in your skin to let that**
20 **heat off. Now, that can work to your advantage if**
21 **it's cooler outside, or can it work to your**
22 **disadvantage if it's hotter outside. Because then**
23 **you can absorb more heat.**

24 **But generally that's a physiologic**
25 **response initially to being hot, to dilate your**

1 skin -- arteries and veins so that you can get rid
2 of heat. And that will make you red.

3 Q. With respect -- again, talking about this
4 hypothetical. If a witness also testified that in
5 addition to seeing this red skin in participants
6 coming out of Mr. Ray's sweat lodge ceremonies and
7 not others, the witness also testified that they
8 saw people coming out vomiting -- occasionally
9 vomiting but did not see that sign in people who
10 came out of ceremonies held on the same property by
11 people other than Mr. Ray, can that factor in
12 addition to seeing the red skin affect your
13 determination of whether or not toxins were at play
14 in 2009?

15 A. You can vomit from toxins. You can vomit
16 from heat illness.

17 Q. Is there -- and, Doctor, let's say,
18 again, on this hypothetical, you had a witness
19 testify that they saw people who appeared
20 unresponsive, laying on the ground, their eyes
21 rolled back, and, again, they saw this pattern
22 where this was something seen in participants
23 from -- at Angel Valley in Mr. Ray's sweat lodge
24 ceremonies but not in other people's ceremonies --

25 MS. DO: Your Honor, I object.

1 May we approach?

2 THE COURT: Why don't we just go ahead and
3 have the noon recess at this time and start a bit
4 earlier. Let's do it that way.

5 So, ladies and gentlemen, we will take
6 the noon recess at this time. Please remember the
7 admonition. Please be reassembled at 10 minutes
8 after 1:00, so about -- a little bit shorter time.
9 And you're excused at this time.

10 And you are too, Dr. Dickson. Remember
11 that rule of exclusion. Thank you, sir.

12 (Proceedings continued outside presence
13 of jury.)

14 THE COURT: Now, there was an objection. And
15 rather than have a bench conference -- I know
16 Mr. Hughes used the word "pattern." And a number
17 of times you've expressed your dislike of that
18 term.

19 MS. DO: Yes, Your Honor. It is that issue.
20 But I also think that Mr. Hughes, at least based
21 upon my understanding of the Court's ruling,
22 though, that it has clearly gone beyond the scope
23 of what the Court indicated would be allowed.

24 I understood Mr. Hughes to state his
25 intention that he was going to ask the witness

1 whether or not people becoming ill under whatever
2 circumstances at Mr. Ray's 2007 and 2008 sweat
3 lodge ceremonies would bear on the cause of death
4 or illnesses in 2009.

5 Mr. Hughes has looped into that
6 hypothetical a comparison of a pattern of Mr. Ray's
7 sweat lodge ceremonies compared to nonJRI sweat
8 lodge ceremonies. I think that's inappropriate.
9 And the use of the word "pattern" repeatedly in
10 this hypothetical essentially tells the jury that
11 we're talking about propensity as opposed to
12 physical, medical causation.

13 THE COURT: I thought I heard "pattern" just
14 once.

15 Mr. Hughes.

16 MR. HUGHES: Your Honor, I did use the word
17 "pattern" once. I was trying not to use that word,
18 but I did use it once. I didn't use it multiple
19 times.

20 Again, I don't believe this evidence
21 suggests propensity. The questions are targeted
22 towards the causation element. And I'm trying to
23 ask targeted, leading -- essentially, leading,
24 targeted questions on that causation issue.
25 It's -- it's not pertaining to the propensity

1 issue. And I know we've been down that -- and
2 discussed that multiple times in the past.

3 MS. DO: Your Honor, I'll correct myself. I
4 think Mr. Hughes did use the word, pattern, once.
5 But the import of the questions, multiple
6 questions, was to compare a pattern of Mr. Ray's
7 sweat lodge ceremonies to nonJRI. And I didn't
8 understand that to be the Court's allowance of this
9 evidence as to cause -- to physical, medical cause.

10 And, secondly, I think that the problem
11 now for me with Mr. Hughes leading this witness
12 into this area is that to the first three or four
13 questions -- leading questions, he said no.

14 THE COURT: I realize that. So I don't --

15 MS. DO: Well, my concern --

16 THE COURT: -- I'm wondering why you're --

17 MS. DO: My concern --

18 THE COURT: -- bringing this up.

19 MS. DO: I'm sorry, Your Honor.

20 My concern is that the next question that
21 will be leading -- the ultimate question that will
22 be leading is -- you know -- do these events, these
23 prior events, bear on the cause of death in 2009?

24 And given what the -- the witness has
25 said to the specific questions, I don't see how

1 **A. Okay.**

2 **Q.** In addition to that, they have something
3 that you don't, which is that they did the
4 autopsies, yes?

5 **A. Correct.**

6 **Q.** And so Dr. Mosley, you understand, has
7 reached a conclusion or an opinion as to cause of
8 death in this case for Ms. Neuman?

9 **A. Okay.**

10 **Q.** Did you know that?

11 **A. Yes. I understand. I've read that.**

12 **Q.** And you know that Dr. Lyon has reached a
13 conclusion and an opinion regarding cause of death
14 for Ms. Brown and Mr. Shore?

15 **A. Yes.**

16 **Q.** All right. And so whatever conclusions
17 or opinions they have reached regarding the cause
18 of death, you would defer to them since they are
19 the state's medical examiners in this case; yes?

20 **A. Yes.**

21 **Q.** All right. Now, do you know who
22 Dr. Brent Cutshall is?

23 **A. No. Not personally.**

24 **Q.** Do you know who Dr. Mark Peterson is?

25 **A. These are names that were on medical**

1 **records, but I don't know them personally.**

2 **Q.** I understand. Because you obviously have
3 also not spoken to any of the doctors who treated
4 any of the 18 who went to the hospital?

5 **A. No.**

6 **Q.** Do you know who Dr. Brent Cutshall
7 treated?

8 **A. No. I don't remember the names of**
9 **doctors specifically for each of the patients. I**
10 **didn't look to see who the doctor was.**

11 **Q.** Sure. Do you know who Dr. Mark Peterson
12 treated?

13 **A. No. Not off the top of my head. No.**

14 **Q.** Have you heard of Dr. Vincent Furrey?

15 **A. Maybe. No -- I mean, it could be one of**
16 **the doctors. Again, I don't look at the names of**
17 **the doctors. I look at the medical records of what**
18 **they saw.**

19 **Q.** The medical records, the charts and the
20 diagnosis of these doctors that you didn't look at
21 the names of; correct?

22 **A. Correct.**

23 **Q.** So then I take it you've never spoken to
24 Dr. Vincent Furrey?

25 **A. No.**

1 **Q.** I'll represent to you that Dr. Brent
2 Cutshall is the ICU doctor who treated Liz Neuman,
3 and Dr. Mark Peterson is the ER doctor who treated
4 Liz Neuman.

5 Any reason to dispute that?

6 **A. No.**

7 **Q.** And Dr. Vincent Furrey, I will represent
8 to you, treated Kirby Brown and James Shore.

9 **A. Okay.**

10 **Q.** Any reason to dispute that?

11 **A. No.**

12 **Q.** Dr. Furrey also treated others. Did you
13 know that?

14 **A. Could be.**

15 **Q.** Okay. Again, you've never spoken to any
16 of these doctors?

17 **A. No, I have not.**

18 **Q.** You yourself, you are in emergency
19 medicine; yes?

20 **A. Yes.**

21 **Q.** You would agree with me that when you're
22 looking at the possible causes for illnesses or
23 death in a patient, the best person who has the
24 best advantage -- or best vantage point would be
25 the doctor who treated the patient; yes?

1 **A. Say the question again.**

2 **Q.** Sure. If somebody was questioning, for
3 example -- let me give you a hypothetical. If
4 somebody was questioning your case work, your
5 diagnosis of a patient; yes?

6 **A. Yes.**

7 **Q.** You have something that person reviewing
8 your record does not have. And that is personal
9 experience in treating that particular patient?

10 **A. Yes. That's correct.**

11 **Q.** All right. So these doctors --
12 Dr. Cutshall, Dr. Furrey, and Dr. Peterson -- all
13 have the advantage of being there on ground zero
14 with their eyes and hands on these patients; yes?

15 **A. Yes.**

16 **Q.** And so because they have that advantage,
17 you also would defer to their medical opinions as
18 to what caused, for example, Ms. Neuman's demise;
19 yes?

20 **A. Can I elaborate on that?**

21 **Q.** Well, did you understand the question,
22 first?

23 **A. I do. I don't know if I can answer it**
24 **yes or no.**

25 **Q.** All right. Go ahead.

1 **A. One of the things I do is I'm on the**
 2 **quality committee in our hospital. And sometimes**
 3 **when you are the attending physician, especially in**
 4 **emergency medicine, you don't have the whole**
 5 **picture at the time. When you're farther down, you**
 6 **get to see the whole picture. Things are available**
 7 **to you that weren't available to you at that time.**

8 **ER is the classic one. A patient comes**
 9 **in. If you see your primary doctor, your doctor**
 10 **knows you. They know your history. As an ER**
 11 **doctor, we are at a disadvantage. We don't know**
 12 **anything about you, and we're trying figure it out**
 13 **from sometimes an unconscious, unresponsive**
 14 **patient.**

15 **So it can be difficult at that setting to**
 16 **have all the answers of an ER when you're in the**
 17 **ER. When you look through the full record, as more**
 18 **things unfold, you're able to make that decision a**
 19 **little easier.**

20 **Q. Do you have any evidence, Doctor, that in**
 21 **this case, Dr. Brent Cutshall, for example, who had**
 22 **Ms. Neuman in Flagstaff Medical for, I believe it**
 23 **was, nine days had lacked any information?**

24 **A. I don't know what he knew about the**
 25 **history. But it seems to -- as you go through the**

1 **records, there is conflicting information. There**
 2 **is -- first some people called it a "smoke house."**
 3 **That would imply there is smoke.**

4 **So I guess it depends on where they are**
 5 **in the information train, how far down, how much**
 6 **they've gotten. Sometimes when you get them**
 7 **initially, you don't know at all, and then you have**
 8 **to sift through it. That doctor would probably be**
 9 **the most likely to have the most information**
 10 **because he took care of the patient for the longest**
 11 **period of time.**

12 **Q. I'm sorry. I might be confused. Can you**
 13 **repeat that one more time.**

14 **A. The intensive care unit doctor was most**
 15 **likely to get the full story as he was with the**
 16 **patient the longest and had the ability as time**
 17 **comes, more information comes, and you can get that**
 18 **story better.**

19 **Q. And so if that doctor in the ICU who you**
 20 **believe would have the most available**
 21 **information -- you would defer to his opinion about**
 22 **the patient he treated; correct?**

23 **A. Yes.**

24 **Q. All right. Now, when you say "history,"**
 25 **I just want to make sure the jury understands.**

1 You're talking about the reported circumstances
 2 from the scene --

3 **A. Correct.**

4 **Q. -- what happened on October 8, 2009?**

5 **A. Correct.**

6 **Q. You're not talking about the medical**
 7 **history of Liz Neuman, for example, that existed**
 8 **prior to October 8?**

9 **A. Well, that's -- medical history is**
 10 **important. When you have somebody that comes --**
 11 **walks into the ER and is unconscious, if they're**
 12 **diabetic, you want to know. If they have a heart**
 13 **history, you'd want to know. There are things that**
 14 **certain populations of people are at risk for. So**
 15 **that's one of the challenges at the beginning.**

16 **Normally if somebody has been in the**
 17 **hospital longer, family, friends, can come in and**
 18 **fill in the blanks which you don't know.**

19 **Q. I understand that. Thank you. Let me**
 20 **make sure the jury understands your answer.**
 21 **Medical history, for example, the record and**
 22 **history of a patient from birth to whatever age**
 23 **they are currently?**

24 **A. Correct.**

25 **Q. It would come from perhaps a family**

1 physician?

2 **A. Family physician or family member,**
 3 **friend.**

4 **Q. And so when you said perhaps some of the**
 5 **doctors in the hospital didn't have a history, were**
 6 **you referring to that kind of medical history as**
 7 **opposed to just the reported circumstances from the**
 8 **scene?**

9 **A. Both.**

10 **Q. Have you in this case had the opportunity**
 11 **to review the medical history, meaning from birth**
 12 **to age 49, for Liz Neuman?**

13 **A. Just what's available in the medical**
 14 **records.**

15 **Q. The same thing that was available to**
 16 **Dr. Cutshall; yes?**

17 **A. Yes.**

18 **Q. And presumably Dr. Peterson, who was the**
 19 **ER doctor who treated her before she went to ICU?**

20 **A. Correct.**

21 **Q. The same thing for Dr. Vincent Furrey on**
 22 **Kirby Brown and James Shore?**

23 **A. Same information.**

24 **Q. So you didn't get anything new from the**
 25 **state or anywhere else that these doctors did not**

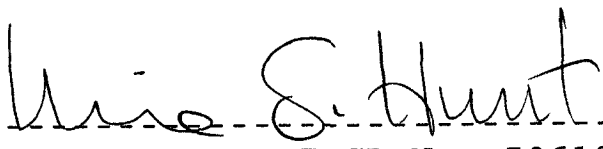
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2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 22nd day of May, 2011.

18
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25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.) Case No. V1300CR201080049
)
 JAMES ARTHUR RAY,)
)
 Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY FORTY-FOUR
MAY 11, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 **the potential is there.**

2 **Q.** And when you say "the article," you're
3 referring again to eMedicine; right?

4 **A. Yes.**

5 **Q.** Well, in that eMedicine article,
6 Dr. Dickson, didn't it state that in the
7 United States, the American Association of Poison
8 Control Centers receive 96,307 calls related to
9 pesticide exposure, many of which involved
10 organophosphate agents and 80 uses of 2-PAM?

11 **A. Yes. That's what it says.**

12 **Q.** All right. And in that article that I
13 gave you, the Goldfrank article, if you would look
14 at page 1498. Take a look at this paragraph
15 starting with, during the five year.

16 During the five-year period of 1998 to
17 2002, the American Association of Poison Control
18 Centers recorded more than 55,000 exposures to
19 organic phosphorus compounds and more than 25,000
20 exposures to carbonates. The number of fatalities
21 averaged about eight per year. These insecticides
22 still rank as the most frequent lethal insecticides
23 in use in the United States and among the most
24 lethal poisonings.

25 Correct?

1 **A. That's what it says.**

2 **Q.** And then it goes on to say that direct
3 dermal contact with certain types of these
4 insecticides may be rapidly poisonous; correct?

5 **A. Lost you there. But yes.**

6 **Q.** So while you may not have seen in your 11
7 years, you're not telling the jury that it doesn't
8 occur; correct?

9 **A. No, I'm not.**

10 **Q.** Because, in fact, it does; correct?

11 **A. Correct.**

12 **Q.** Now, you had also told the jury yesterday
13 that the signs and symptoms of organophosphates are
14 very similar to the signs and symptoms of heat
15 stroke.

16 Do you remember that?

17 **A. There can be overlap in their
18 presentation.**

19 **Q.** I'm sorry?

20 **A. There can be overlap in their
21 presentation.**

22 **Q.** All right. And we went through this
23 chart with Dr. Cutshall, so I'm going to ask you
24 the same questions.

25 You would agree that there are

1 overlapping signs and symptoms; right?

2 **A. Yes.**

3 **Q.** And some of the overlapping symptoms
4 start with -- and let me back up a little bit.

5 We've heard from many witnesses, and I
6 think you testified to yesterday, that heat
7 illnesses exist on a continuum. Right?

8 **A. Yes.**

9 **Q.** And on the mild end you have heat
10 exhaustion; right?

11 **A. Correct.**

12 **Q.** And heat exhaustion is caused by volume
13 depletion and dehydration; correct?

14 **A. Heat exhaustion is not necessarily caused
15 by volume depletion and dehydration. Heat
16 exhaustion is made worse by volume depletion and
17 dehydration. And it can cause volume depletion and
18 dehydration.**

19 **Q.** So if Dr. Cutshall, the ICU doctor who
20 treated Neuman, testified that heat exhaustion is
21 caused by volume depletion and dehydration, you
22 would disagree with him?

23 **A. They can happen together. But they don't
24 have -- it makes sense. If it's really hot, you
25 sweat. But -- you know -- you can be well**

1 **hydrated. We talked about the cases of people in
2 Yuma who drink tons and tons of water. They're
3 well hydrated. But it's 120 outside or 115.
4 They're getting heat exhaustion even though they're
5 well hydrated. So they're not mutually exclusive.**

6 **Q.** My question is, if Dr. Cutshall testified
7 that heat exhaustion is caused by -- not that you
8 can -- but it's caused by volume depletion and
9 dehydration, do you agree or disagree with that?

10 **A. I would have to disagree.**

11 **Q.** All right. Now, under heat exhaustion
12 you can see fatigue and weakness; correct?

13 **A. Correct.**

14 **Q.** You can also see that under
15 organophosphate poisoning?

16 **A. Correct.**

17 **Q.** You can see malaise?

18 **A. Correct.**

19 **Q.** And malaise is?

20 **A. Just feeling weak, like you've got the
21 flu, virus. You just don't feel good.**

22 **Q.** And you can see that under
23 organophosphate poisoning --

24 **A. Correct.**

25 **Q.** -- right?

1 Nausea, vomiting, and abdominal cramps.
 2 You see that in heat exhaustion?
 3 **A. Correct.**
 4 **Q.** Also under organophosphate poisoning?
 5 **A. Correct.**
 6 **Q.** Vertigo or dizziness?
 7 **A. Correct.**
 8 **Q.** You see it in both cases; right?
 9 **A. Correct.**
 10 **Q.** Headaches. You can see in heat
 11 exhaustion and organophosphates; right?
 12 **A. Correct.**
 13 **Q.** So if someone testified that -- that you
 14 never see headache under organophosphates, that
 15 would be wrong; right?
 16 **A. Well, I'm sure if you're very sick, you**
 17 **can get a headache. Headaches are a pretty**
 18 **nonspecific finding. Lots of things that cause**
 19 **headache.**
 20 **Q.** Okay. And I appreciate that
 21 clarification. These various signs and symptoms
 22 are nonspecific, meaning it's not -- it doesn't say
 23 this is heat stroke or this is organophosphate;
 24 right?
 25 **A. If that -- those things can go on -- the**

1 **list can go on for miles of what it -- what that**
 2 **causes --**
 3 **Q.** Muscle cramps and twitching. You can see
 4 that in both cases; right?
 5 **A. Correct.**
 6 **Q.** And dehydration. You can see actually
 7 also in organophosphates; right?
 8 **A. Yes. I mean, if somebody is to that**
 9 **extreme, if you're salivating, vomiting, diarrhea**
 10 **so much that that would cause dehydration,**
 11 **absolutely.**
 12 **Q.** And you told this jury yesterday that the
 13 key marker dividing heat exhaustion and heat stroke
 14 is the altered mental status?
 15 **A. Correct.**
 16 **Q.** You can also see that in organophosphate
 17 poisoning; right?
 18 **A. Correct.**
 19 **Q.** The temperature -- now, I know that the
 20 eMedicine article that you copied said 106 degrees
 21 Fahrenheit. Is that right?
 22 **A. That's what the eMedicine article says.**
 23 **Q.** But when you copied it, you changed it to
 24 104; right?
 25 **A. Correct.**

1 **Q.** So you can see high temperatures actually
 2 under both authorities; correct?
 3 **A. I don't believe that the acute setting of**
 4 **heat -- of organophosphate is going to cause a**
 5 **fever.**
 6 **Q.** Thank you. So you're only going to see
 7 that high temperature in heat stroke; right?
 8 Right?
 9 **A. You'd only see an -- I don't believe**
 10 **you'd see an elevated temperature in**
 11 **organophosphate poisoning.**
 12 **Q.** Right. You're only going to see that in
 13 heat stroke?
 14 **A. Correct.**
 15 **Q.** Metabolic acidosis, which this jury had
 16 heard, is, basically, a lot of acid -- right? -- in
 17 your blood?
 18 **A. Correct.**
 19 **Q.** You can see that also in
 20 organophosphates?
 21 **A. Sure.**
 22 **Q.** Is that right?
 23 **A. Sure.**
 24 **Q.** It's nonspecific?
 25 **A. It's nonspecific. The list of metabolic**

1 **acidosis is huge.**
 2 **Q.** But rhabdo -- I'm going to shorten it.
 3 Rhabdo is the breakdown of muscles; correct?
 4 **A. Correct.**
 5 **Q.** You can see that in both heat exhaustion,
 6 heat stroke -- I'm sorry -- heat stroke and
 7 organophosphates; right?
 8 **A. Yes. Be more predominant, I think, in a**
 9 **heat-related illness, especially if dehydration is**
 10 **part of it. But yes. In theory you can definitely**
 11 **have that.**
 12 **Q.** All right. So you would agree with
 13 Dr. Cutshall, who said you can see both -- you can
 14 see it in both cases?
 15 **A. Correct.**
 16 **Q.** The elevated creatinine. Also in both
 17 cases; right?
 18 **A. Correct.**
 19 **Q.** Acute renal failure. Also in both;
 20 correct?
 21 **A. Definitely possible.**
 22 **Q.** Now, Dr. Mosley testified that there are
 23 two things that are inconsistent with heat
 24 stroke -- inconsistent with heat stroke. And that
 25 are -- that is pinpoint pupils or miosis and

1 **A. Absolutely.**
 2 **Q.** And the autopsy report?
 3 **A. And it's completely opposite to their**
 4 **physical exam findings.**
 5 **Q.** So you're saying now the doctors'
 6 testimony in this case to this jury is all wrong
 7 compared to the medical records? Is that what
 8 you're saying?
 9 MR. HUGHES: Objection. Misstates the
 10 doctor's total testimony to the jury.
 11 THE COURT: Sustained.
 12 **Q.** BY MS. DO: You've just told the
 13 jury that -- and I understand you weren't here.
 14 The jury was.
 15 **A. Right.**
 16 **Q.** Hypothetically that was the testimony of
 17 Dr. Cutshall, Dr. Lyon, Dr. Mosley.
 18 **A. Uh-huh.**
 19 **Q.** You're saying that it's all inconsistent
 20 with the medical records, their physical exam, you
 21 said; right?
 22 **A. No. I said their physical exam was**
 23 **consistent with heat illness.**
 24 **Q.** Okay. You're not following me. Let me
 25 ask it one more time.

1 **A. Okay.**
 2 **Q.** You understand in the hypothetical that
 3 if the jury has heard testimony, evidence, from
 4 that witness stand from Dr. Cutshall, Dr. Lyon, and
 5 Dr. Mosley that they cannot rule out
 6 organophosphates, that there are signs and symptoms
 7 consistent with organophosphates?
 8 **A. There are signs and symptoms that can be**
 9 **consistent to both. I -- we agreed with this**
 10 **yesterday. There are signs and symptoms, and we**
 11 **did a whole list of heat illness and**
 12 **organophosphates. There are overlap, absolutely,**
 13 **of the symptoms.**
 14 **Q.** Dr. Dickson, I believe yesterday you
 15 testified under direct that you believe the signs
 16 and symptoms were inconsistent with
 17 organophosphates, which is why we wrote on the
 18 easel, signs and symptoms inconsistent with
 19 organophosphates; right?
 20 **A. Yes.**
 21 **Q.** That's your testimony; right?
 22 **A. Absolutely.**
 23 **Q.** Okay. So now my question is this: The
 24 jury has heard testimony from three doctors and
 25 will hear from a fourth that their opinions are

1 different from yours. I would like you to tell the
 2 jury what piece of fact or information you have
 3 that these doctors didn't?
 4 **A. I guess I'm not understanding your**
 5 **question. You're saying that the doctors --**
 6 **according to your question, do those doctors have**
 7 **information that I don't have? I don't think so.**
 8 **Is that answering your question --**
 9 **Q.** I'm asking you this question because you
 10 had speculated a number of times that perhaps these
 11 doctors don't have the big picture that you have.
 12 **A. Actually, I said when -- we talked about**
 13 **when you're seeing a patient at a certain time, for**
 14 **example, an ER doc. One of the classic problems**
 15 **with ER docs, is, if you ever heard the expression**
 16 **"Monday morning quarterbacking," you only have so**
 17 **much information when -- when you're the ER doc**
 18 **or -- and you're working through a history in a**
 19 **case with a patient, and you do the best you can.**
 20 **Now, somebody goes back and looks at this**
 21 **whole record, they get to see it all after the game**
 22 **is over. And they can say, well, it was obvious it**
 23 **was this. But at the beginning you wouldn't have**
 24 **that information.**
 25 **So what I said was maybe at the time of**

1 **their description, they didn't have all the**
 2 **information. Now, when they're making their**
 3 **decision, they should have all the same**
 4 **information.**
 5 **Q.** Okay. So it was speculation on your
 6 part, then, when these doctors testified they
 7 didn't have all the available information; correct?
 8 Let me -- let me ask you this question:
 9 You understand Dr. Mosley is the one who autopsied
 10 Ms. Neuman; right?
 11 **A. Correct.**
 12 **Q.** Do you have any evidence or any knowledge
 13 of whether or not Dr. Mosley had received all of
 14 the same information that you have?
 15 **A. I don't know what he received, but I**
 16 **assume it would be the same.**
 17 **Q.** Okay. So let's not speculate as to
 18 whether or not the doctors had information or not.
 19 Okay? What I'm asking you is this: Assuming --
 20 let's do this. It's easier.
 21 Assuming hypothetically they had the same
 22 information you had but more in the sense that
 23 Dr. Lyon --
 24 **A. I'm just trying to get -- assuming**
 25 **hypothetically that they had the same information**

1 **that I had. Okay.**

2 **Q.** Dr. Lyon did the autopsy of two
3 decedents; right?

4 **A. Okay.**

5 **Q.** Which you didn't?

6 **A. I did not.**

7 **Q.** And Dr. Mosley did the autopsy of one
8 decedent; right?

9 **A. Okay.**

10 **Q.** That you did not do?

11 **A. Correct.**

12 **Q.** Dr. Cutshall treated one of the patients
13 that died; right?

14 **A. Correct.**

15 **Q.** Including Sidney Spencer and Tess Wong;
16 right?

17 **A. Correct.**

18 **Q.** Okay. What I'd like to try and
19 understand is, since your opinion in this case is
20 so different from those three doctors, is there a
21 piece of information that you have received that
22 these doctors may not have had?

23 **MR. HUGHES:** Objection, Your Honor. Misstates
24 the totality of the other doctors' testimony.

25 **THE COURT:** Sustained.

1 **Q.** BY MS. DO: You reviewed the same
2 evidence as those doctors; right?

3 **A. I assume that -- I don't know what they**
4 **reviewed. They had the same available as I did. I**
5 **assume. You have to tell me.**

6 **Q.** And you reached a totally different
7 conclusion than them?

8 **A. Well, I don't think so.**

9 **Q.** Well, let's look up on the easel. The
10 things we wrote up there after you testified,
11 Dr. Dickson, you would agree are different; right?

12 **A. Well, you wrote is what's different. But**
13 **you're telling me that hypothetically these doctors**
14 **that presented to you -- I mean, you guys heard it,**
15 **not me -- said that these patients all had signs of**
16 **organophosphate poisoning.**

17 **Q.** Let me correct you there. I didn't say
18 all. I said signs and symptoms, specifically
19 miosis and foaming.

20 **A. Okay. Well, that's a different thing.**

21 **Q.** Well, Dr. Dickson, I'm not going to argue
22 with you, but I believe I've asked you those
23 questions.

24 Let's do this and then we're going to
25 finish. Since there are four doctors who reviewed

1 the same evidence you have, concluded they cannot
2 rule out organophosphates, the signs and symptoms,
3 specifically miosis and foaming, are consistent
4 with organophosphates, you differ with that
5 opinion. Is there any possibility that you, being
6 the outlier, is wrong?

7 **A. Well, I don't think I'm the outlier.**
8 **What you're saying is you said that they have**
9 **miosis and foaming of the mouth. And we already**
10 **discussed that those too can present in heat**
11 **illness and in organophosphate. I think we're**
12 **saying the same thing.**

13 **Q.** Okay. Then let me go with that, then.
14 You're saying now to this jury that miosis and
15 foaming is consistent with organophosphates?

16 **A. No. That's not what I said. I said that**
17 **it can present in organophosphate and heat illness.**

18 **Q.** Okay. I don't want to play semantics.
19 My question to you is, is it now your testimony
20 that miosis, pinpoint pupils, and foaming is
21 consistent with organophosphate as well as heat
22 illnesses?

23 **A. Yes.**

24 **Q.** Okay. So since it's consistent with
25 organophosphates as well as heat illnesses, you

1 can't really testify, Doctor, that the signs and
2 symptoms are all inconsistent with
3 organophosphates; correct?

4 **A. Well, yes, I can. Because it's a big**
5 **picture. That comes down to if you look at -- it's**
6 **like looking at one little speck of the big**
7 **picture. And what we discussed thoughtfully a**
8 **little while ago was what kills people with**
9 **organophosphate poisoning. And that's what --**
10 **that's what we're talking about, people that are**
11 **dying or really, really sick. And that's because**
12 **they, essentially, drown.**

13 **And when I looked at these cases, we have**
14 **several cases of people that lived and died that**
15 **were stuck on their back with a mask on their face.**
16 **Now, if you've got a mouthful of water and that's**
17 **going to keep going, you're going to kill these**
18 **patients. You're not going to help them. And**
19 **that's the big difference.**

20 **I go back to the literature. This is a**
21 **clinical diagnosis. You have to look at clinically**
22 **what the presentation was. And that -- these**
23 **people didn't have those symptoms.**

24 **So there is a lot of overlap between heat**
25 **illness and organophosphate poisoning and the flu,**

1 everything that Dr. Mosley and Dr. Lyon had at the
2 time they reached their autopsy conclusions; right?

3 **A. Hypothetically. Yes.**

4 **Q.** Hypothetically. And you've now heard
5 hypothetically that Dr. Lyon is only certain to
6 1 percent better than a coin toss, 51/49, that it
7 was heat stroke; right?

8 **A. Okay.**

9 **Q.** Right?

10 **A. Correct. I've heard that.**

11 **Q.** And your conclusion that it's 99 percent
12 heat stroke is based on his conclusion in part;
13 right?

14 **A. In part, yes.**

15 **Q.** Okay. Same thing with Dr. Mosley and
16 Dr. Cutshall. Now, you're reviewing the same thing
17 that they have, but you've reached a very different
18 conclusion in the sense that they say they cannot
19 rule out organophosphates conclusively and that
20 there are signs and symptoms consistent with
21 organophosphates.

22 When you say somebody is "Monday
23 quarterbacking," isn't it you that's Monday
24 quarterbacking here?

25 **A. This is absolutely the -- this is the**

1 **time where you get to look at all of this. It's**
2 **all Monday morning quarterbacking.**

3 **Q.** Isn't it possible, Dr. Dickson, that the
4 doctors who treated the patients, the doctors who
5 autopsied the decedents, would actually know better
6 than somebody who's just reviewing the cold record?

7 **A. Could be.**

8 **Q.** So can you concede the possibility that
9 perhaps one doctor against four, that one doctor is
10 wrong?

11 **A. I still don't see how it's one versus**
12 **four.**

13 **Q.** Hypothetically.

14 **A. Hypothetically. Hypothetically what?**

15 **Q.** Hypothetically you're the only one with
16 this conclusion that is different from
17 Dr. Cutshall, Lyon, and Mosley?

18 **A. Hypothetically pigs can fly, but I'm not**
19 **going to concede that.**

20 **Q.** You understand in this case that certain
21 questions have to be formed in a hypothetical;
22 right?

23 **A. I'm not a lawyer. I don't know.**

24 **Q.** All right.

25 **A. I'm sorry.**

1 **Q.** I'll just represent to you that's the way
2 it's done. The jury has heard the testimony.

3 My question to you is, since you're
4 Monday quarterbacking the doctors who treated these
5 patients, who autopsied them, whose opinion that
6 was offered on the witness stand differs from
7 yours, isn't it possible that you're wrong?

8 **A. Well --**

9 **Q.** Isn't possible that you're wrong?

10 **A. That comes back to the question of**
11 **possible. When you brought that to these**
12 **patients -- these people cannot rule out**
13 **exclusively or -- is that -- what was the word you**
14 **used? These doctors could not rule out**
15 **organophosphates --**

16 **Q.** With any certainty or conclusively.

17 **A. Conclusively. I guess I'm not ruling it**
18 **out conclusively because I'm saying 99 percent of**
19 **the time. Conclusive is something that's not**
20 **available in this diagnosis. It's not.**

21 **Q.** So what you're telling the jury is that
22 it is possible that this was a case of
23 organophosphates?

24 **A. There -- there's is 99 percent sure that**
25 **it's heat illness. And there's always a 1 percent.**

1 **Q.** So you have a 1 percent possibility; is
2 that right?

3 **A. That's what I said.**

4 **Q.** Okay. Now, if these doctors who treated
5 the patient and autopsied them have a different
6 opinion, would you defer to them?

7 **A. I'd love to talk to them about it, see if**
8 **they have any --**

9 **Q.** You could have, but you didn't; right?

10 **A. I didn't know I was offered that**
11 **actually.**

12 **Q.** You didn't know you could call them?

13 **A. No idea.**

14 **Q.** Okay. So, final question, Doctor. Isn't
15 it possible, since you're Monday quarterbacking,
16 don't have the personal hands-on experience in the
17 case investigation, that you're the one who's
18 wrong?

19 **A. Again, I don't think we're on different**
20 **pages. All their evidence that I have here says**
21 **we're on the same page.**

22 **Q.** So it's possible that you're wrong?

23 **A. I'm not saying it's possible that I'm**
24 **wrong.**

25 **Q.** Okay. So we're back to you being the

1 you remember the chart where you're the outlier?
 2 **A. Yeah.**
 3 **Q.** Perhaps it's on this one. You were asked
 4 questions about -- here we go. You were asked
 5 questions about being the outlier. First of all,
 6 do you know whether Drs. Cutshall, Lyon, or Mosley
 7 reviewed all of the 18 patients' medical records?
 8 **A. I have no idea.**
 9 **Q.** And assuming that they did not review all
 10 of the patients' medical records, would you believe
 11 that that could affect the validity of your opinion
 12 versus any opinions they expressed?
 13 **A. Say that again. I'm sorry.**
 14 **Q.** Well, how can reviewing all of the
 15 medical records for all of the patients make a
 16 difference in determining what actually happened to
 17 these three people who died?
 18 **A. It gives you the full picture. You need**
 19 **to have all the information to -- to make that**
 20 **judgment.**
 21 **Q.** And if Dr. Cutshall testified that,
 22 assuming there was no evidence of organophosphates
 23 at the scene, he would still believe the cause of
 24 death was heat stroke, would that put him in your
 25 camp or the other camp as far as being an outlier?

1 MS. DO: I'm going to object. That misstates
 2 the testimony.
 3 THE COURT: Once again, ladies and gentlemen,
 4 just use your memory recollection regarding the
 5 testimony.
 6 Overruled.
 7 You may answer that.
 8 THE WITNESS: Well, that was the whole
 9 argument was. I believe these doctors -- Mosley,
 10 Lyon, and Cutshall -- showed clearly in their
 11 medical records that they thought heat illness was
 12 involved in their deaths. So that's -- we spent a
 13 lot of time on this. And I don't see the -- the
 14 separation.
 15 **Q.** BY MR. HUGHES: And assuming Dr. Lyon
 16 had, essentially, the same opinion, that if there
 17 were no organophosphates at the scene, he would
 18 still believe that the cause of death was heat
 19 stroke, would that -- where -- where would that put
 20 him along your line there?
 21 **A. It puts them all in the same stack.**
 22 MS. DO: Objection.
 23 I'm sorry, Doctor.
 24 THE WITNESS: That's okay.
 25 MS. DO: Objection, Your Honor. Misstates the

1 testimony.
 2 THE COURT: It was a hypothetical.
 3 You may answer that.
 4 THE WITNESS: Puts us in the same -- puts us
 5 all in the same pile.
 6 **Q.** BY MR. HUGHES: Now, Dr. Mosley, slightly
 7 different boat than Dr. Cutshall and Dr. Lyon.
 8 Assuming Dr. Mosley believed that organophosphates
 9 did not play a role but the cause of death was heat
 10 stroke and possibly hypercapnia, too much carbon
 11 dioxide, is hypercapnia, or too much carbon
 12 dioxide, something that's inconsistent with your
 13 findings in this case?
 14 **A. No. It's not inconsistent.**
 15 **Q.** And can you explain the role that
 16 hypercapnia can have in the deaths of, for example,
 17 Ms. Neuman, who was Dr. Mosley's patient.
 18 **A. Well, when all of us ultimately do die,**
 19 **you ultimately stop breathing. And when you stop**
 20 **breathing, your oxygen level goes down and your**
 21 **carbon dioxide level goes up. And hypercapnia is**
 22 **too much carbon dioxide. So it's kind of -- that's**
 23 **part of all of our demises one way or another.**
 24 **Q.** You were asked some questions about
 25 Ms. Neuman's medical records and specifically

1 whether certain records might be generated for
 2 insurance purposes.
 3 Do you remember being asked that?
 4 **A. Yes.**
 5 **Q.** And referring to Exhibit 365, Bates
 6 No. 2657, have you ever had a patient who, despite
 7 your best efforts, has died on you in the hospital?
 8 **A. Yes.**
 9 **Q.** And when you've had that patient, have
 10 you noted the chart with the death note?
 11 **A. Yes.**
 12 **Q.** When you make that notation, are you
 13 making up something so you can just give the
 14 insurance company some technical term?
 15 **A. No.**
 16 **Q.** What's your purpose for you when you make
 17 a death note in a patient's chart?
 18 **A. To give your impression of what happened.**
 19 **Q.** And this is -- unfortunately you've heard
 20 the jokes, I'm sure, about doctors' handwriting?
 21 **A. Right.**
 22 **Q.** This is -- can you read the handwriting
 23 on Bates page 2657?
 24 **A. Well, part of it says, patient critically**
 25 **ill with heat stroke. And then there's an arrow.**

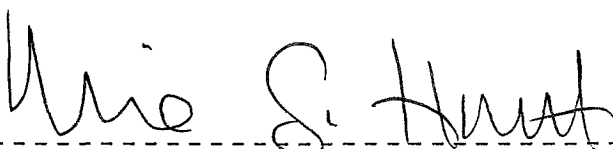
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9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 23rd day of May, 2011.

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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.)
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

Case No. V1300CR201080049

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY FORTY-SIX
MAY 26, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 **A. I was on 20/20.**
 2 **Q.** You were on 20/20. Anything else?
 3 **A. No.**
 4 **Q.** What was the approximate date of your
 5 appearance on 20/20?
 6 **A. My appearance on the actual show was,**
 7 **like, in June of last year, I believe. June or**
 8 **July.**
 9 **Q.** June of 2010?
 10 **A. Yes.**
 11 **Q.** And when were you interviewed?
 12 **A. Like, February.**
 13 **Q.** Other than that appearance on 20/20, did
 14 you appear elsewhere in the media, grant any
 15 interviews?
 16 **A. I didn't grant any interviews.**
 17 **Q.** Pardon me?
 18 **A. I did not grant any interviews.**
 19 **Q.** So this was the only interview you
 20 granted?
 21 **A. Yes.**
 22 **Q.** I want to take you back now to the time
 23 in which you've completed the fifth round. You've
 24 made it through the heart round. You asked Josh
 25 for help. And Josh helps you, and you start to

1 exit the sweat lodge.
 2 Do you recall your testimony in that
 3 regard?
 4 **A. Yes.**
 5 **Q.** And you told us that as you approached
 6 the location of Mr. Ray, which is right next to the
 7 door, he says, no; correct?
 8 **A. Uh-huh.**
 9 **Q.** Somebody says, can she leave? And you
 10 don't know who that someone is; correct?
 11 **A. No.**
 12 **Q.** And then your testimony on direct was you
 13 heard Mr. Ray say, no; correct?
 14 **A. That I heard him say, no?**
 15 **Q.** Yes.
 16 **A. Yes.**
 17 **Q.** And he wasn't speaking to you; correct?
 18 **A. Correct.**
 19 **Q.** He was speaking to someone else; correct?
 20 **A. Yes.**
 21 **Q.** And you told us on direct that at that
 22 point you realized the "no" was in response to some
 23 other conversation going on in the sweat lodge;
 24 correct?
 25 **A. Right.**

1 **Q.** And you described on direct that in or
 2 during the sweat lodge ceremony, most of the time
 3 you were in there, there was a lot of conversation
 4 going on; correct?
 5 **A. There were a lot of people shouting**
 6 **things. Yes.**
 7 **Q.** I think used words such as "screaming,"
 8 "crying," "talking," "yelling." Correct?
 9 **A. I don't know about talking.**
 10 **Q.** Conversing back and forth?
 11 **A. Yes.**
 12 **Q.** Like you and Josh were doing; correct?
 13 **A. I didn't really hear any of the smaller**
 14 **conversations like that. I just heard the people**
 15 **that were talking loudly so --**
 16 **Q.** I'm not asking you about what you heard.
 17 I'm trying to give the jury a visual depiction of
 18 what's going on in the sweat lodge. And it sounds
 19 rather chaotic. Fair statement?
 20 **A. Yes. It was somewhat chaotic.**
 21 **Q.** It was noisy?
 22 **A. Yes.**
 23 **Q.** Many different conversations going on of
 24 varying types. Fair statement?
 25 **A. Yes.**

1 **Q.** As an example, you were speaking with
 2 Josh. And that was a conversation between you and
 3 Josh; correct?
 4 **A. Yes.**
 5 **Q.** And others could have been talking to
 6 other people, as far as you know; correct?
 7 **A. It's possible.**
 8 **Q.** In addition to that you heard screaming;
 9 right?
 10 **A. Yes.**
 11 **Q.** And as you're leaving and you hear
 12 Mr. Ray say no, you realized that he's speaking to
 13 someone else; correct?
 14 **A. Yes.**
 15 **Q.** So for that brief moment in time, you
 16 thought Mr. Ray was speaking to you. But, in fact,
 17 he was not?
 18 **A. Correct.**
 19 **Q.** And you told us that it was unclear who
 20 he was talking to. There was lots of conversations
 21 going on; correct?
 22 **A. Yes.**
 23 **Q.** So it was easy for you to -- for that
 24 brief second in time until you made eye contact to
 25 make a mistake as to who James Ray was talking to;

1 correct?

2 **A. Say it again.**

3 **Q.** Until you were able to make eye
4 contact -- because I believe you said you heard the
5 word "no," and you looked at him with the look of
6 are-you-kidding-me look. I think that was your
7 testimony. Correct?

8 **A. Yes.**

9 **Q.** And my point is, until you made that eye
10 contact, you didn't realize that the "no" from
11 Mr. Ray was not directed towards you; correct?

12 **A. Correct.**

13 **Q.** So you could have easily mistaken that
14 had you not made that eye contact is my point,
15 possibly?

16 **A. It's possible.**

17 **Q.** And the reason is because there is a lot
18 of conversations going on, and it would be easy to
19 mistake what people were saying in response to
20 particular questions; correct?

21 **A. Again, I guess it's possible. Part of**
22 **the whole teaching the class is really that we**
23 **distinguish what's so.**

24 **Q.** It happened? It happened to you;
25 correct?

1 **A. Yes.**

2 **Q.** After the fifth round; correct?

3 **A. Yes.**

4 **Q.** Thank you, Ms. Rainey.
5 Thank you, Judge.

6 THE COURT: Thank you, counsel.

7 MR. KELLY: May I have a minute?

8 THE COURT: Yes.

9 MR. KELLY: May I ask one final question?

10 THE COURT: Yes.

11 **Q.** BY MR. KELLY: We just talked about the
12 conversation about what you believed. Mr. Ray
13 said, no, and you realized he was talking to
14 someone else? Just for the last five minutes;
15 correct?

16 **A. Yes.**

17 **Q.** Now, actually, I wrote this down. He
18 actually -- when you made that eye contact and gave
19 him the are-you-kidding-me look, he actually
20 confirmed that it was okay for you to leave;
21 correct?

22 **A. Yes.**

23 **Q.** Thank you.

24 Thank you, Judge.

25 THE COURT: Redirect, Ms. Polk?

1 MS. POLK: Yes. Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. POLK:

4 **Q.** Ms. Rainey, let me just start with that
5 last topic, the conversation that occurred as you
6 were leaving after the fifth round.

7 What was said before you heard Mr. Ray
8 say, no?

9 **A. You mean she can't leave?**

10 **Q.** And where were you when you heard that?

11 **A. I was close to the door.**

12 **Q.** And you made eye contact with Mr. Ray?

13 **A. I looked over at him. I don't know that**
14 **I made eye contact. I looked over to him.**

15 **Q.** And how did he -- what did he then say?

16 **A. I think he said, no, or, she can go. It**
17 **wasn't about me.**

18 **Q.** When he said, no. She can go, that was
19 not referring to you?

20 **A. That was -- I took it as he was saying**
21 **that I could go.**

22 **Q.** Was that after you had, in Mr. Kelly's
23 words, glared at him, glared at Mr. Ray?

24 **A. Yes.**

25 **Q.** Is it possible that after you made eye

1 contact with Mr. Ray, he changed?

2 MR. KELLY: Your Honor, objection to the
3 leading form of this question.

4 THE COURT: Sustained.

5 **Q.** BY MS. POLK: Let me see if I can ask
6 that a different way. What made you believe -- or
7 did you believe, first of all, that you were not
8 being allowed to leave by Mr. Ray?

9 **A. No.**

10 **Q.** Did you believe at some point that the
11 conversation pertained to your ability to get out?

12 **A. Initially I did.**

13 **Q.** And what made you believe that?

14 **A. There was just a -- I think we all kind**
15 **of felt like that we shouldn't leave or we couldn't**
16 **leave.**

17 MR. KELLY: Your Honor, I'm going to object to
18 the response and ask that it be stricken.

19 THE COURT: Sustained.

20 **Q.** BY MS. POLK: And you can only speak for
21 yourself. What made you feel that way?

22 **A. I didn't feel like I could -- in the back**
23 **of my mind I had that running that I didn't think**
24 **that I could just leave. And I also wasn't really**
25 **willing for him to say no to me that I couldn't.**


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25 CA CSR No. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant.)
9 _____)

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R. DARROW
16 TRIAL DAY FORTY-SEVEN
17 MAY 27, 2011
18 Camp Verde, Arizona

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24 REPORTED BY
25 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

10:15:21AM 1 A. Well, in the fourth round -- well,
10:15:26AM 2 actually in the third round I asked -- we did the
10:15:33AM 3 third round twice.

10:15:35AM 4 Q. What makes you say that?

10:15:36AM 5 A. Because the third round -- we did it.
10:15:40AM 6 And then James said -- started going into his chant
10:15:48AM 7 and saying what round it was, and he said third
10:15:52AM 8 round again. And then somebody from this area over
10:15:56AM 9 here -- I heard them say, hey. You repeated
10:16:01AM 10 round 3. And he just continued.

10:16:03AM 11 Q. "He" being?

10:16:03AM 12 A. James Ray. And then after that round was
10:16:06AM 13 up, I then again asked Sean Ronan and James Shore
10:16:11AM 14 if they wanted to move back.

10:16:13AM 15 Q. And how did Sean Ronan respond?

10:16:15AM 16 A. Sean Ronan initially said, no. But when
10:16:19AM 17 the round started, he moved back along side of me
10:16:23AM 18 over here between me and Linda Andresano. And at
10:16:27AM 19 that point James Shore was on his knees and his
10:16:30AM 20 elbows, and he was laying parallel to the pit.

10:16:35AM 21 And I looked at him and asked him if he
10:16:37AM 22 wanted to move back. I said, there's room. I knew
10:16:41AM 23 there was room because people kept leaving and then
10:16:43AM 24 coming back. And so there's -- it makes space.

10:16:45AM 25 And again he said -- he looked at me

10:16:50AM 1 distressed but firm in his conviction and said, no.
10:16:56AM 2 I'm fine right here.

10:16:56AM 3 Q. What makes you use the word "distressed"
10:17:01AM 4 for James Shore?

10:17:02AM 5 A. In the way he responded to me.

10:17:04AM 6 Q. And how was that?

10:17:05AM 7 A. He looked up at me like on an angle like
10:17:10AM 8 this, and he said -- and his voice was more like
10:17:15AM 9 out of breath. And he said, no. No. I'm fine.

10:17:19AM 10 Q. What happened next that you remember?

10:17:29AM 11 A. I believe at that time after Sean had
10:17:31AM 12 moved next to me and I was laying on my stomach,
10:17:34AM 13 that's when James Ray would throw the water on.
10:17:38AM 14 And droplets would splash on the back of my calf
10:17:44AM 15 muscles.

10:17:45AM 16 And so that's when I -- I would then
10:17:45AM 17 after that lift my legs up this way whenever he
10:17:49AM 18 threw water on so that the hot water wouldn't
10:17:53AM 19 splash onto me.

10:17:55AM 20 Q. And then at some point did you seek
10:18:01AM 21 another way to get some relief?

10:18:03AM 22 A. Yes. That was around the fourth round --
10:18:07AM 23 or the third -- one of the third rounds, I believe.
10:18:10AM 24 Because I was lifting the edge to get some oxygen,
10:18:15AM 25 which I had learned to do in 2008 from Jennifer

10:27:04AM 1 I would. But I just couldn't.

10:27:07AM 2 And then I heard somebody say, Kirby's in
10:27:13AM 3 trouble. She needs to get out of here now. And
10:27:15AM 4 that was about the time the gate was closing after
10:27:17AM 5 the sixth round. And that's when James Ray said,
10:27:24AM 6 well, we're closing -- I forget his exact words.
10:27:28AM 7 But he's closing the gate, and we'll take care of
10:27:31AM 8 her afterwards, after the round.

10:27:32AM 9 Q. You testified that if you had been in a
10:27:37AM 10 position to help Kirby, you would have been. What
10:27:40AM 11 about the sound that you heard made you conclude
10:27:44AM 12 that she needed help?

10:27:48AM 13 A. Well, from experience watching
10:27:55AM 14 television, I guess would be when you hear somebody
10:28:04AM 15 gurgling their last breath, you've seen it on TV.
10:28:06AM 16 And it sounded exactly the same. So I was
10:28:08AM 17 concerned. But yet at that point I was barely
10:28:13AM 18 holding on myself. So you just have to give it up
10:28:18AM 19 and hope for the best.

10:28:21AM 20 Q. When you heard Kirby gurgling, describe
10:28:27AM 21 for the jury how much other noise there was in the
10:28:31AM 22 sweat lodge at that time.

10:28:32AM 23 A. I didn't hear any other noise because it
10:28:35AM 24 was right before the gate was closed for the
10:28:38AM 25 seventh round. And typically anybody who would

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16 In witness whereof, I have affixed my
17 signature this 2nd day of June, 2011.

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23 -----
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25 CA CSR No. 8335

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<p>169</p> <p>1 Q Do you remember that testimony?</p> <p>2 A It was -- yes</p> <p>3 Q My question then is if Fawn Foster took</p> <p>4 the stand under oath and /TO*ELD this jury she had</p> <p>5 spoken to no /WUP about what happened October 8,</p> <p>6 2009 that would be a lie, correct?</p> <p>7 A No, because I'm not --</p> <p>8 Q You answered it That's your opinion</p> <p>9 fine If Michael Hamilton took the witness stand</p> <p>10 and told us that he had not spoke to anyone about</p> <p>11 what happened between October 8, 2009 and the date</p> <p>12 of his testimony, then that would not be true,</p> <p>13 correct?</p> <p>14 A Correct</p> <p>15 Q And of course the same is true for Amayra</p> <p>16 Hamilton, correct?</p> <p>17 A</p> <p>18 Q Because you spoke with /ER?</p> <p>19 A Yeah, I spoke with them</p> <p>20 Q You went through the healing process?</p> <p>21 A Correct</p> <p>22 Q You were talking about your /TRAPBL</p> <p>23 /TKEUS and your life expenences and how much</p> <p>24 impact this had had on your life?</p> <p>25 A Correct</p>	<p>171</p> <p>1 a box lunch /STAFP seven bucks without it, correct?</p> <p>2 A Correct</p> <p>3 Q It's been cancelled by you?</p> <p>4 A Yes</p> <p>5 Q On October 8, 2009, you told the</p> <p>6 detective when you were asked did you render aid to</p> <p>7 anybody you said no, correct?</p> <p>8 A Correct</p> <p>9 Q Because your focus was to get out of</p> <p>10 there and get myself resuscitated, correct?</p> <p>11 A Correct</p> <p>12 Q So it's your testimony Mr Rock that when</p> <p>13 you hear this /HO /REUF I can gurgling sound from</p> <p>14 Kirby Brown you don't do anything, correct?</p> <p>15 A Yes, and that's what I have to live with</p> <p>16 Q You took car of yourself, correct?</p> <p>17 A I took care of myself so I could get out</p> <p>18 and resuscitate so I could possibly help somebody</p> <p>19 else</p> <p>20 Q And you told Detective Parkison,</p> <p>21 lieutenant bolts, and this jury that everyone that</p> <p>22 day was exercising free choice, correct?</p> <p>23 A That's what I said</p> <p>24 Q That people were free to go in the sweat</p> <p>25 lodge if they chose to, correct?</p>
<p>170</p> <p>1 Q It was part of the repressed memory that</p> <p>2 came out that ^ aloud ^ allowed you to more</p> <p>3 accurately testimony in front of this jury,</p> <p>4 correct?</p> <p>5 A Correct</p> <p>6 Q Risen to this statement Mr Rock The</p> <p>7 gate opened and I crawled out I looked and I had</p> <p>8 seen I knew it was not my time, but my spint</p> <p>9 will wander as the birds stayed singing and my</p> <p>10 garden will stay in its green trees rning I am</p> <p>11 here to share my story of love and purpose Who is</p> <p>12 the author of that statement Mr Rock?</p> <p>13 A I am the author of that statement</p> <p>14 Q In fact, your /SKAOED scheduled to make a</p> <p>15 presentation on June 18 2011 at the Sedona arts</p> <p>16 center about what happened to you on October 8,</p> <p>17 2009, correct?</p> <p>18 A No, I'm not</p> <p>19 Q Did you cancel it?</p> <p>20 A It's cancelled, yes</p> <p>21 Q You were scheduled to make a presentation</p> <p>22 about your expenence on June 18, along with Debra</p> <p>23 Martin, correct?</p> <p>24 A Yes</p> <p>25 Q The fee for that is ^ 88 ^ '88 /-D with</p>	<p>172</p> <p>1 A They were free to go in</p> <p>2 Q They were /TPWRAOE to leave if they</p> <p>3 wanted to, correct?</p> <p>4 A Yes, they were /TPWRAOE to leave if they</p> <p>5 were capable</p> <p>6 Q And you told us of words you heard from</p> <p>7 Kirby Brown and those words were we can do it, we</p> <p>8 can do it from Kirby, correct?</p> <p>9 A Correct</p> <p>10 Q And at no time did you help anyone,</p> <p>11 correct?</p> <p>12 A Yeah, and that's why I have the problem I</p> <p>13 have</p> <p>14 Q Thank you Mr Rock, thank you, Judge</p> <p>15 THE COURT Thank you counsel redirect</p> <p>16 Ms Polk</p> <p>17 MS POLK Yes /SKWRURPB Your Honor Thank</p> <p>18 you</p> <p>19 Q</p> <p>20 MS POLK Your Honor counsel has agreed to</p> <p>21 the admission of exhibit 1070</p> <p>22 THE COURT 1070 is admitted</p> <p>23 MR KELLY Judge I'd ask the county attorney</p> <p>24 explain the relation the between 1069 and 1070</p> <p>25 MS POLK Your Honor this is the petition</p>

<p>69</p> <p>1 event If that explains why she's in there I</p> <p>2 think she really answered though She wanted to</p> <p>3 follow through, get her monies worth that kind of</p> <p>4 thing in an unleading fashion If people have</p> <p>5 reasons for why they're staying in the sweat lodge,</p> <p>6 they can respond That's the /PWEFTD I can say</p> <p>7 We'll be in recess Thank you</p> <p>8 Going back through these issues that have</p> <p>9 been discussed so extensively at the start of the</p> <p>10 tnal The refund policy thing comes up again</p> <p>11 This witness I believe has already been asked her</p> <p>12 reasons as to why or why not she stayed in I</p> <p>13 think she said she didn't flow wasn't that the</p> <p>14 response</p> <p>15 MR KELLY Judge my response I don't know why</p> <p>16 I stayed in so long also she indicated that she was</p> <p>17 trying to get her monies worth throughout the</p> <p>18 entire seminar</p> <p>19 THE COURT Why she just completed that And</p> <p>20 what really happens Ms Polk and I said this It's</p> <p>21 really inviting the jury to speculate that some how</p> <p>22 this is the real reason why the stated or alleged</p> <p>23 victims stayed in Just inviting that kind of</p> <p>24 speculation when we know one person was involved in</p> <p>25 a number of these, a lot of these people had</p>	<p>71</p> <p>1 breathing coming from I'm going to put ^ back</p> <p>2 up ^ backup 414?</p> <p>3 A I was about here and I heard it coming</p> <p>4 from this area here It was directly to my right</p> <p>5 Q Can you describe the breathing for the</p> <p>6 jury?</p> <p>7 A It was very labored and it almost sounded</p> <p>8 like somebody that had asthma I had a sister that</p> <p>9 had asthma I know what that sounds like /-FPLGTS I</p> <p>10 knew someone was having some difficulty I didn't</p> <p>11 know what at the time</p> <p>12 Q Did the breathing concern you?</p> <p>13 A It did, but I was still out of it So</p> <p>14 there wouldn't have been a whole lot I could have</p> <p>15 done</p> <p>16 Q How long did that breathing go on for?</p> <p>17 A I want to say the last couple of rounds</p> <p>18 until the end I heard it</p> <p>19 Q Did you hear anybody call out with a</p> <p>20 concern?</p> <p>21 A I didn't</p> <p>22 Q You testified earlier that you heard</p> <p>23 someone call out with a concern about Liz Neuman?</p> <p>24 A I did</p> <p>25 Q When was that that you heard someone call</p>
<p>70</p> <p>1 participated in a number of event They knew the</p> <p>2 situation And to just have that speculation,</p> <p>3 really is a focus it is a true 403 concern Again,</p> <p>4 if somebody actually will that reason in mind and</p> <p>5 that was a factor in staying in there and that</p> <p>6 explains this whole situation the various mind sets</p> <p>7 that's one thing If that's something that's said</p> <p>8 comes up in an unleading fashion in a none read</p> <p>9 none leading fashion it invites speculation about</p> <p>10 the sometimes of people who are alleged to be</p> <p>11 victims I want to clarify that Thank you</p> <p>12 (States of mind of people /PREB)</p> <p>13 THE COURT The /WR-RS of Mr The record will</p> <p>14 is show the presence of Mr Ray the attorney the</p> <p>15 jury ^ Miss ^ miss /PWREUPB /KHREU has returned to</p> <p>16 the /STAPD Ms Polk</p> <p>17 MS POLK</p> <p>18 Q Thank you, miss /PWREUPB /KHREU during</p> <p>19 the final rounds of the sweat lodge did you hear</p> <p>20 anything that concerned you?</p> <p>21 A Yes</p> <p>22 Q Tell the jury what you heard?</p> <p>23 A I heard very /WHAOEZ I breathing like</p> <p>24 probably in the last couple of rounds</p> <p>25 Q What direction did you hear that</p>	<p>72</p> <p>1 out with a concern about Liz Neuman?</p> <p>2 A Again, I kind of lost track of the</p> <p>3 rounds If I had to guess I would say it was maybe</p> <p>4 the 6th or seven /-GTS round towards the ends</p> <p>5 Q How close in time was what you heard the</p> <p>6 concern you've already testified about, how close</p> <p>7 in time was that to the time when you heard the</p> <p>8 labored breathing?</p> <p>9 A I probably heard the breathing that heavy</p> <p>10 breathing begin shortly after that 1520 minutes</p> <p>11 is a good /TKPW-S</p> <p>12 Q The concern that when you heard someone</p> <p>13 call out about Liz, will you tell the jury what you</p> <p>14 heard?</p> <p>15 A I heard my friend Laura Tucker, I</p> <p>16 recognized her voice say Liz is having some trouble</p> <p>17 here I'm concerned about her Those may not have</p> <p>18 been her exact words that was in effect what she</p> <p>19 was saying</p> <p>20 Q What did you hear Mr Ray say?</p> <p>21 A Liz is okay /-FPT she's been in here</p> <p>22 before, we'll wait until the round ends to take</p> <p>23 care of it</p> <p>24 Q We'll wait until the round ends to take</p> <p>25 care of her?</p>

<p>73</p> <p>1 A Something like that</p> <p>2 Q Are you sure that Mr Ray at that time</p> <p>3 stated wait until the round is over and we'll take</p> <p>4 care of her?</p> <p>5 A Yes, I'm sure</p> <p>6 Q Were you conscious of the breathing until</p> <p>7 the ceremony ended?</p> <p>8 A Maybe not up to the very end, but I know</p> <p>9 that I heard it at least through the 7th round</p> <p>10 Q And how many rounds were there?</p> <p>11 A To my knowledge there were eight total</p> <p>12 Q Do you recall today whether you heard the</p> <p>13 breathing during the eighth round?</p> <p>14 A /POS /WHREU at the beginning but maybe</p> <p>15 not towards the end At the end I was more focused</p> <p>16 on wanting to get out</p> <p>17 Q I just need to go back and cover a</p> <p>18 mistake that was drawn to my attention I put up</p> <p>19 on the overhead Exhibit 460 seven which is your</p> <p>20 medical record from Verde Valley medical center I</p> <p>21 drew your attention to a time up here But as we</p> <p>22 look down below, where it says time seen and date</p> <p>23 seen?</p> <p>24 A Right</p> <p>25 Q Do you see where it says 1082009,</p>	<p>75</p> <p>1 MR KELLY Thank you, Judge</p> <p>2 Q May I have just a minute?</p> <p>3 THE COURT Yes</p> <p>4 MR KELLY</p> <p>5 Q Miss /PWREUPB /KHREU how are you today?</p> <p>6 A Fine thank you</p> <p>7 Q I'm Tom Kelly one of the attorneys that</p> <p>8 represents Mr Ray You and I have never met</p> <p>9 correct?</p> <p>10 A No</p> <p>11 Q And you have met my comp /PA DRE Truc Do</p> <p>12 during an interview, correct?</p> <p>13 A Yes in December</p> <p>14 Q I believe that took place during December</p> <p>15 of 2010?</p> <p>16 A Yes</p> <p>17 Q Was she personally present, or was it</p> <p>18 telephonic?</p> <p>19 A Yes she was.</p> <p>20 Q May I approach the witness?</p> <p>21 THE COURT Yes</p> <p>22 Q BY MR KELLY ^ Miss ^ Miss /PWREUPB</p> <p>23 /KHREU I'm going to hand you what has been marked</p> <p>24 for purposes of identification three interviews</p> <p>25 Which have been transcribed?</p>
<p>74</p> <p>1 10 304 00 p m ?</p> <p>2 A Yes</p> <p>3 Q Would that appear to be the time that you</p> <p>4 were at the hospital?</p> <p>5 A I had no sense of time, so I couldn't</p> <p>6 even tell you</p> <p>7 Q Could be?</p> <p>8 A Yeah</p> <p>9 Q And then finally, I'd like to show you</p> <p>10 exhibit 1066 and ask you who that is in that</p> <p>11 photograph?</p> <p>12 A That's me</p> <p>13 Q And is that the haircut you got?</p> <p>14 A Yes</p> <p>15 Q Do you recall what activity was going on,</p> <p>16 are you able to tell us what activity was going on</p> <p>17 from this photograph?</p> <p>18 A Well, this looks like, I can tell this is</p> <p>19 the meeting room and sometimes James would give a</p> <p>20 short lecture and we would have some discussion</p> <p>21 afterwards That looks like what might have been</p> <p>22 what was happening there</p> <p>23 MS POLK Thank you miss /PWREUPB /KHREU,</p> <p>24 thank you, Your Honor</p> <p>25 THE COURT Thank you Ms Polk Mr Kelly</p>	<p>76</p> <p>1 A Okay</p> <p>2 Q And I didn't help you do this if you turn</p> <p>3 them over, look at the very small numbers on the</p> <p>4 back, one of them should say exhibit 629?</p> <p>5 Q You see that?</p> <p>6 A Yes</p> <p>7 Q Turn to the face page exhibit 629 is a</p> <p>8 transcript of an interview you and Pam Edgerton</p> <p>9 October 8, 2009 at the Sedona medical /TER?</p> <p>10 A Yes</p> <p>11 Q You recall that interview?</p> <p>12 A I do</p> <p>13 Q This document says it was about 15</p> <p>14 minutes in ^ length ^ lent?</p> <p>15 A Could have been</p> <p>16 Q Also ma'am, if you take a look at</p> <p>17 Exhibit 613?</p> <p>18 A Okay</p> <p>19 Q Did you find that one?</p> <p>20 A Yes</p> <p>21 Q This one indicate there was an interview</p> <p>22 between you and Detective Diskin on June 9 2010</p> <p>23 correct?</p> <p>24 A Yes</p> <p>25 Q Says it's about 50 minutes in lengths?</p>

<p>185</p> <p>1 the overhead and show the jury who on here is Kirby</p> <p>2 Brown</p> <p>3 Were you aware during the week that Kirby</p> <p>4 had had her head shaved?</p> <p>5 A Yes</p> <p>6 Q And specifically aware of it or just</p> <p>7 generally?</p> <p>8 A Generally</p> <p>9 Q I'm going to put up on the overhead</p> <p>10 exhibit 1046 Do you see James Shore in this</p> <p>11 photograph?</p> <p>12 A It's possible this is him here</p> <p>13 Q And you say possible are you not sure?</p> <p>14 A Not sure because I can't see his</p> <p>15 ^ full ^ if you will face</p> <p>16 Q Would it help if I brought the photograph</p> <p>17 up or would it make a difference?</p> <p>18 A I don't think so</p> <p>19 Q I'm going to put up on the overhead</p> <p>20 exhibit 1045 You had talked about Tess Wong and</p> <p>21 going into the sweat lodge with /T*ES?</p> <p>22 A Yes</p> <p>23 Q Show the jury please?</p> <p>24 A Right there</p> <p>25 Q I'll circle is this who you intend to</p>	<p>187</p> <p>1 it.</p> <p>2 Q When was she saying that?</p> <p>3 A Around round three or four</p> <p>4 Q What was going on in terms of the</p> <p>5 ceremony itself by Mr Ray when Kirby was saying we</p> <p>6 can do it?</p> <p>7 A She did not talk over James as he had</p> <p>8 words to say at the beginning of each round So it</p> <p>9 was after he stopped talking then she would start</p> <p>10 saying those words</p> <p>11 Q How many times did she say we can do it?</p> <p>12 A That time?</p> <p>13 Q Yes</p> <p>14 A At least three</p> <p>15 Q Was it in a very loud voice?</p> <p>16 A Yes</p> <p>17 Q How loud?</p> <p>18 A Not quite shouting but not talking</p> <p>19 Q Did you hear anybody around you respond</p> <p>20 to what -- will you put yourself and Kirby ^ back</p> <p>21 up ^ backup Did you hear anybody around Kirby</p> <p>22 respond when she was saying we can do it loudly?</p> <p>23 A I did</p> <p>24 Q Do you know who responded /FRPBLTD I</p> <p>25 believe it was Sean?</p>
<p>186</p> <p>1 indicate?</p> <p>2 A Yes</p> <p>3 Q I want to ask you some questions now</p> <p>4 about Kirby Brown inside the sweat lodge At some</p> <p>5 point did you become aware that Kirby was talking?</p> <p>6 A Yes</p> <p>7 Q And around what round did you become</p> <p>8 aware of Kirby talking?</p> <p>9 A Maybe the third or fourth round</p> <p>10 Q Again, your position was this area?</p> <p>11 A Yes</p> <p>12 Q And see if you can make a mark for Kirby</p> <p>13 where she was when you became aware of her talking?</p> <p>14 A Was there</p> <p>15 Q Was there anybody between you and Kirby</p> <p>16 at this time?</p> <p>17 A Yes</p> <p>18 Q Who was between you?</p> <p>19 A Shore and Sidney</p> <p>20 Q James Shore and Sidney Spencer?</p> <p>21 A Uh-huh</p> <p>22 Q What drew your attention to Kirby at that</p> <p>23 time?</p> <p>24 A She was starting a chant, not a chant,</p> <p>25 she was repeatedly saying we can do it, we can do</p>	<p>188</p> <p>1 Q And where was Sean</p> <p>2 A Maybe nghts here</p> <p>3 Q What /TKAU did you hear Sean say?</p> <p>4 A He asked Kirby to shut up and stop saying</p> <p>5 that, because we are doing it, it's not we can do</p> <p>6 it, we are doing it</p> <p>7 Q What sort of voice did Sean use when he</p> <p>8 said that?</p> <p>9 A A loud voice</p> <p>10 Q And what was his tone like?</p> <p>11 A Firm</p> <p>12 Q Did anybody else say anything at that</p> <p>13 time to Kirby?</p> <p>14 A There were other people that /KHAOEUPLD</p> <p>15 in on that as well and I don't know who</p> <p>16 Q What did you hear other people say?</p> <p>17 A Same thing we are doing it and for her to</p> <p>18 stop saying that. To be quiet and stop saying</p> <p>19 that</p> <p>20 Q Was it significant to you the words that</p> <p>21 Kirby was using we can do it?</p> <p>22 MR LI Objection relevance speculation</p> <p>23 foundation</p> <p>24 THE COURT Overruled</p> <p>25 THE WITNESS I had thoughts around what she</p>

<p style="text-align: right;">189</p> <p>1 was saying</p> <p>2 Q And thank you tell the jury what the your</p> <p>3 thoughts were?</p> <p>4 A It was she was</p> <p>5 MR LI Objection Calls for speculation</p> <p>6 Your Honor</p> <p>7 THE COURT If it's having to do what's in</p> <p>8 someone else's mind yes, sustained</p> <p>9 Q BY MS POLK When Sean and others said</p> <p>10 what she said to Kirby, did Kirby respond?</p> <p>11 A She kept saying those same words over</p> <p>12 again until she heard other people telling her to</p> <p>13 stop and I heard her stop</p> <p>14 Q Did she ever say those words again?</p> <p>15 A She did</p> <p>16 Q And when did she say them again?</p> <p>17 A Maybe the 6th round or 7th round</p> <p>18 Q The first time was which round?</p> <p>19 A The third or fourth and this might have</p> <p>20 been the 6th round</p> <p>21 Q And what did she say around the 6th</p> <p>22 round?</p> <p>23 A Same, we can do it</p> <p>24 Q What sort of voice did Kirby use?</p> <p>25 A Loud voice again</p>	<p style="text-align: right;">191</p> <p>1 Q Why was what Kirby saying invoking that</p> <p>2 response from people?</p> <p>3 MR LI Objection Calls for speculation</p> <p>4 THE COURT Once again if it has to do with</p> <p>5 somebody else's possible state of mind</p> <p>6 Q BY MS POLK Did it invoke a response</p> <p>7 from you, a thought when Kirby /SAS was saying we</p> <p>8 can do it?</p> <p>9 A Yes</p> <p>10 Q What was your reaction to that?</p> <p>11 A That she was trying to convince herself</p> <p>12 MR LI Objection move to strike speculation</p> <p>13 THE COURT Overruled</p> <p>14 Q BY MS POLK People said to her shut up?</p> <p>15 A Yes</p> <p>16 Q Was that a reaction that you had as well?</p> <p>17 A Yes</p> <p>18 Q And why?</p> <p>19 A Partly because it was -- it was</p> <p>20 repetitive like a chant and it was December /RUP</p> <p>21 /TEUFPL for what I was perceiving as needing to</p> <p>22 take care of my well being Both in my journey and</p> <p>23 what was going on and why I was in the sweat lodge</p> <p>24 in the first place So it was disruptive It</p> <p>25 wasn't part of anything that was instructed to do</p>
<p style="text-align: right;">190</p> <p>1 Q How loud?</p> <p>2 A More than talking less than shouting</p> <p>3 Q Did you observe anything about her voice</p> <p>4 other than it was loud This is the six /-GTS</p> <p>5 round?</p> <p>6 A Only judgements on my part</p> <p>7 Q Did you observe anything about Kirby's</p> <p>8 breathing at that time?</p> <p>9 A No</p> <p>10 Q And when Kirby again was saying we can do</p> <p>11 it did anybody respond?</p> <p>12 A Yes, once again there were several people</p> <p>13 telling her to shut up and stop saying that, Sean</p> <p>14 again, and I thought I heard I did I heard Josh</p> <p>15 tell her if you don't stop doing it we're going to</p> <p>16 ask you to leave</p> <p>17 Q Tell the jury who Josh is?</p> <p>18 A Josh is an employee or staff member of</p> <p>19 James Ray</p> <p>20 Q Do you know where Josh was sitting inside</p> <p>21 the sweat lodge when he said that to Kirby?</p> <p>22 A I do He's right here</p> <p>23 Q And what sort of tone of voice did Josh</p> <p>24 use?</p> <p>25 A Firm, clear, loud</p>	<p style="text-align: right;">192</p> <p>1 It was spontaneous and it was in my opinion, not</p> <p>2 appropriate</p> <p>3 Q Was it distracting?</p> <p>4 A Yes</p> <p>5 Q When she -- when Kirby was saying we can</p> <p>6 do it, we can do it was it loud enough for Mr Ray</p> <p>7 to hear?</p> <p>8 A I don't know It was loud I can't tell</p> <p>9 you if he heard it or not</p> <p>10 Q Did you ever hear Mr Ray respond at that</p> <p>11 time when Kirby is said we can do it?</p> <p>12 A I did not hear his voice particularly</p> <p>13 Q When you heard the second time when you</p> <p>14 heard Kirby saying we can do it, did you physically</p> <p>15 see her, did you observe her?</p> <p>16 A No, it was dark</p> <p>17 Q At any time around /-TD 6th round were</p> <p>18 you able to observe /KEUR business position in the</p> <p>19 sweat lodge?</p> <p>20 A Yes</p> <p>21 Q And what did you observe about it?</p> <p>22 A That she was laying down</p> <p>23 Q When she was saying we can do it the</p> <p>24 second time?</p> <p>25 A No, this was -- I observed her when the</p>

<p>193</p> <p>1 flap was open at the ends of the 6th round</p> <p>2 Q And in relationship to what you just</p> <p>3 testified about what can you remember by was</p> <p>4 saying, was that before or after?</p> <p>5 A Ask me that again</p> <p>6 Q You observed Kirby at the end of the 6th</p> <p>7 round is that what you just testified?</p> <p>8 A I could see her, yes</p> <p>9 Q Had you already heard Kirby say we can do</p> <p>10 it?</p> <p>11 A Yes</p> <p>12 Q You testified nght before we took the</p> <p>13 break about Sidney Spencer being passed out and</p> <p>14 James Shore dragging her out. When did you hear</p> <p>15 Kirby say we can do it, in relationship to James</p> <p>16 Shore dragging Sidney Spencer?</p> <p>17 A Before</p> <p>18 Q Before that?</p> <p>19 A Uh-huh</p> <p>20 Q Did you ever hear after the 6th round</p> <p>21 ever hear Kirby Brown again say we can do it?</p> <p>22 A No</p> <p>23 Q Are you able to tell the jury today</p> <p>24 approximately how many times between the two</p> <p>25 different times you heard Kirby say that how many</p>	<p>195</p> <p>1 up ^ backup there</p> <p>2 After Mr Shore took Sidney out and he</p> <p>3 came back where did he go?</p> <p>4 A It was dynamic So first he came back to</p> <p>5 where he originally was, which was next to me nght</p> <p>6 here and then when we now discovered Kirby having a</p> <p>7 difficulty breathing we had a conversation about</p> <p>8 getting her off of her back and I had said to him,</p> <p>9 get her off her back</p> <p>10 Q So let me back you up a little bit When</p> <p>11 Mr Shore came back in, and took that position that</p> <p>12 you've just shown the jury, where was Kirby</p> <p>13 How much time had passed sense you had</p> <p>14 last heard Kirby say we can do it and what you're</p> <p>15 descnbing now for the jury?</p> <p>16 A Maybe 15 minutes</p> <p>17 Q And what happened dunnig that 15 minutes?</p> <p>18 A Round six completing the flap opening,</p> <p>19 Sidney being taken out and James coming back</p> <p>20 Q When Kirby said we can do it, did you</p> <p>21 ever hear anybody say we are doing it?</p> <p>22 A Yes</p> <p>23 Q Was that the first or the second time you</p> <p>24 heard Kirby saying that?</p> <p>25 A That was the first time</p>
<p>194</p> <p>1 times she said it?</p> <p>2 A Combined, more than six</p> <p>3 Q At the ends of the 6th round then, you</p> <p>4 said that you saw Kirby, was the flap open or</p> <p>5 closed?</p> <p>6 A At the end of the 6th round, the flap was</p> <p>7 open</p> <p>8 Q What did you observe about Kirby at that</p> <p>9 time?</p> <p>10 A That I heard her having trouble</p> <p>11 breathing</p> <p>12 Q With respect to what you've testified</p> <p>13 about James Shore pulling Sidney Spencer out, was</p> <p>14 this before or after that?</p> <p>15 A After</p> <p>16 Q So after James Shore dragged Sidney</p> <p>17 Spencer, what did he do?</p> <p>18 A He came back and he and I had some</p> <p>19 communication, I don't know if I started it or he</p> <p>20 started it, but that she's having trouble</p> <p>21 breathing</p> <p>22 Q That's what James Shore said to you?</p> <p>23 A I think that's what I had said</p> <p>24 Q Let me clear the board and have you show</p> <p>25 us again some positions, if you put yourself ^ back</p>	<p>196</p> <p>1 Q And what did you hear?</p> <p>2 A We are doing it Kind of a correction to</p> <p>3 what she was saying, we can do it it was Sean he</p> <p>4 was saying we are doing it And again asking her</p> <p>5 to shut up</p> <p>6 Q When Mr Shore then came back in, and</p> <p>7 took the position that you've just shown the jury</p> <p>8 between you and Kirby, what did you become aware</p> <p>9 of Did you become aware of Kirby?</p> <p>10 A Yes</p> <p>11 Q And what drew your attention to her?</p> <p>12 A Her difficulty, the sound of her</p> <p>13 breathing</p> <p>14 Q Descnbe for the jury what you heard</p> <p>15 about /KEUR business breathing /-RPBLGS it sounded</p> <p>16 like there was very /STPHOT I nose sound like you</p> <p>17 have a very bad cold kind of fluid sounding</p> <p>18 /STPHOT</p> <p>19 Q And how loud was her breathing?</p> <p>20 A Louder, you could here it, versus not</p> <p>21 being able to hear breathing you could hear her lay</p> <p>22 bonng to breath You could hear that</p> <p>23 Q When was the first time you heard Kirby's</p> <p>24 labored breathing?</p> <p>25 A At the end of the -- when Sidney was</p>

<p>201</p> <p>1 THE COURT Not knowing the scope, Ms. Polk</p> <p>2 Sustained as to the form of the question</p> <p>3 Foundation</p> <p>4 Q BY MS POLK Having heard what you</p> <p>5 described as James Shore struggling around the</p> <p>6 fourth round, were you surprised that he came back</p> <p>7 after dragging Sidney Spencer?</p> <p>8 A I was</p> <p>9 Q And why were you surprised?</p> <p>10 A /PWAOEUSD left and chose to come back</p> <p>11 He had his own free will to stay outside and he</p> <p>12 chose to come back in</p> <p>13 Q And ^ ones ^ once he came back in how</p> <p>14 much time passed before you had the conversation</p> <p>15 with him about Kirby?</p> <p>16 A 15 seconds, /PWRETS /TEU quickly</p> <p>17 Q Did you and Mr. Shore successfully turn</p> <p>18 Kirby?</p> <p>19 A Yes</p> <p>20 Q And what direction did you turn her?</p> <p>21 A Facing away from me towards shore</p> <p>22 Q And what position then did you get Kirby</p> <p>23 to lay in?</p> <p>24 A On her side</p> <p>25 Q During the time that were you moving</p>	<p>203</p> <p>1 Q BY MS POLK Did you make any other</p> <p>2 observations about were Kirby's eyes open or</p> <p>3 closed?</p> <p>4 A I couldn't see that</p> <p>5 Q Did her body respond in any way react in</p> <p>6 any way when you turned her to her side?</p> <p>7 A No</p> <p>8 Q Did she assist you in any way when you</p> <p>9 turned her to her side?</p> <p>10 A No</p> <p>11 Q Did she move her body on her own after</p> <p>12 you turned her to her side?</p> <p>13 A Not that I know of</p> <p>14 Q What happened next with respect to Kirby</p> <p>15 This was the beginning of the 7th round?</p> <p>16 A I think -- yes</p> <p>17 Q Do you recall whether the flap was opened</p> <p>18 or closed when you and Mr. Shore moved Kirby to her</p> <p>19 side?</p> <p>20 A It was as -- getting ready to close, so</p> <p>21 we were in process of doing this</p> <p>22 Q How long did it take you to get Kirby to</p> <p>23 her side?</p> <p>24 A 15 seconds</p> <p>25 Q What happened after you got Kirby to her</p>
<p>202</p> <p>1 Kirby to her side did she respond in any way to</p> <p>2 you?</p> <p>3 A No</p> <p>4 Q And what was her /PWRAEGTD /-G like?</p> <p>5 A The same</p> <p>6 Q Once you got her to her side did her</p> <p>7 breathing change at all?</p> <p>8 A No</p> <p>9 Q Did that concern you?</p> <p>10 A Not more than what I was already</p> <p>11 concerned, because she still was breathing</p> <p>12 Q And what do you mean Because she was</p> <p>13 still breathing, what did that mean to you?</p> <p>14 MR LI Objection, Your Honor form of the</p> <p>15 question</p> <p>16 THE COURT Overruled, you may answer that</p> <p>17 THE WITNESS Would you ask it again please</p> <p>18 Q BY MS POLK You said that -- I don't</p> <p>19 want to misquote you, but something at least she</p> <p>20 was still breathing or she was still /PWRAEGTD /-G?</p> <p>21 MR LI Your Honor, she did not at least</p> <p>22 She was still breathing for the record Counsel</p> <p>23 could just ask the question</p> <p>24 THE COURT Just as to the form The question</p> <p>25 Ms. Polk /PWRAES phrase another question</p>	<p>204</p> <p>1 side?</p> <p>2 A We continued with the next round</p> <p>3 Q And did anything happen during the seven</p> <p>4 /-GTS round with respect to Kirby or Mr. Shore?</p> <p>5 A We were both talking to her, telling her</p> <p>6 to keep breathing</p> <p>7 Q What were you in particular saying to</p> <p>8 Kirby /-FRPLG keep breathing?</p> <p>9 Q What was Mr. Shore saying to Kirby?</p> <p>10 A Things like, it's going to be okay and</p> <p>11 suite things like that He had a very suite voice</p> <p>12 with her, keep breathing and it's going to be okay</p> <p>13 He was very gentle with her in my opinion</p> <p>14 Q Why did you say to Kirby keep breathing?</p> <p>15 A For trying to give some reassurance and</p> <p>16 some -- I don't know just incident /TEUBGT /TEUFL</p> <p>17 that's what I said</p> <p>18 Q Did you believe that she was going to</p> <p>19 stop breathing?</p> <p>20 A I did not have that thought</p> <p>21 Q Did you say keep /PWRAEGTD /-G to anybody</p> <p>22 else around you?</p> <p>23 A To shore, when he was laying next to me,</p> <p>24 yes</p> <p>25 Q And was that later at the same time?</p>

<p>205</p> <p>1 A That was prior that was in rounds prior</p> <p>2 to this</p> <p>3 Q And that's when you heard Mr Shore</p> <p>4 struggling?</p> <p>5 A Yes</p> <p>6 Q And what did you say to him in rounds</p> <p>7 prior?</p> <p>8 A Stay calm and just keep breathing, to</p> <p>9 stay calm</p> <p>10 Q When you then ^ ones ^ once the 7th round</p> <p>11 began and you were saying to Kirby keep breathing,</p> <p>12 did Kirby respond to you?</p> <p>13 A No</p> <p>14 Q What do you recall happening next?</p> <p>15 A The 7th round happening the way all the</p> <p>16 other rounds happened</p> <p>17 Q And about how long do you recall the</p> <p>18 seven /GTS round being?</p> <p>19 A The same I mean things started to feel</p> <p>20 longer after the seven /GTS round When the flap</p> <p>21 opened at the seven /GTS round it seems there was</p> <p>22 a lot of activity going on and I remember thinking</p> <p>23 please hurry, hurry, I want this over Just I</p> <p>24 was starting to get wrapped up in my head a little</p> <p>25 bit and had to bring myself calm myself down</p>	<p>207</p> <p>1 did anything happen with respect to Kirby Brown</p> <p>2 while the flap was open between the 7th and the</p> <p>3 eighth round?</p> <p>4 A Near It seemed like there was a lot</p> <p>5 From my perspective there was a -- it seemed like</p> <p>6 that flap was open forever and please just let's</p> <p>7 move onto the eighth round and near the ends of all</p> <p>8 of the that, shore said, I need help getting her</p> <p>9 out or I need help ^ over here ^ overhear</p> <p>10 Q Where was James Shore when he said that?</p> <p>11 A I believe in the same position that he</p> <p>12 had been prior</p> <p>13 Q Do you recall -- do you know whether</p> <p>14 James Shore was sitting up or lying down when he</p> <p>15 said that?</p> <p>16 A When I had seen him, he was up on his</p> <p>17 right elbow</p> <p>18 Q In what direction?</p> <p>19 A Facing Kirby</p> <p>20 Q And do you recall what he was doing up on</p> <p>21 his right elbow?</p> <p>22 A Talking to her</p> <p>23 Q While the flap was open, he called out?</p> <p>24 A Yes</p> <p>25 Q What sort of voice did he use?</p>
<p>206</p> <p>1 Because I wanted to finish</p> <p>2 Q When the flap opened at the end of the</p> <p>3 7th /ROUPB was where was Kirby Brown?</p> <p>4 A Still in the same place</p> <p>5 Q Were you still hearing her breathing?</p> <p>6 A Yes</p> <p>7 Q What did her breathing sound like?</p> <p>8 A The same</p> <p>9 Q This is when she'd been on her side now</p> <p>10 for a round?</p> <p>11 A Yes</p> <p>12 Q Where was James Shore?</p> <p>13 A On her opposite side So on her left</p> <p>14 side</p> <p>15 Q And was Mr Shore talking to you at all</p> <p>16 at the end of the 7th round?</p> <p>17 A No</p> <p>18 Q Was he talking to Kirby at all?</p> <p>19 A Yes, he was saying He was continual</p> <p>20 continuing to say thing to her</p> <p>21 Q You had testified earlier that two times,</p> <p>22 you had heard Mr Ray say something about the</p> <p>23 light. When was the second time?</p> <p>24 A During the eighth round</p> <p>25 Q So let me back up a little /PWEUTD then,</p>	<p>208</p> <p>1 A Not a very -- one I heard him say that</p> <p>2 It was not a voice where he projected It wasn't a</p> <p>3 demanding or firm voice</p> <p>4 Q Would you describe it as weak?</p> <p>5 A No</p> <p>6 Q And what do you recall specifically</p> <p>7 Mr Shore saying?</p> <p>8 A I need help ^ over here ^ overhear</p> <p>9 Q Did anybody respond?</p> <p>10 A I don't believe so</p> <p>11 Q Did you hear Mr Ray say anything?</p> <p>12 A Not until after the flap closed was there</p> <p>13 an announcement that no one was leaving at that</p> <p>14 time</p> <p>15 Q And what did you hear Mr Ray say</p> <p>16 specifically?</p> <p>17 A No one is leaving at this time</p> <p>18 Q And do you recall him saying anything</p> <p>19 else?</p> <p>20 A I don't</p> <p>21 Q And do you recall being interviewed on</p> <p>22 October 8 of 2009 and talking about this</p> <p>23 specifically with the detective?</p> <p>24 A I don't</p> <p>25 Q If you saw a transcript of that interview</p>

<p style="text-align: right;">213</p> <p>1 Q And that was after Mr Ray said what?</p> <p>2 A I believe that he said after the flap was</p> <p>3 closed that no one can leave at this point</p> <p>4 Q Why do you think today that was after the</p> <p>5 flap was closed?</p> <p>6 A Because it was consistent with other</p> <p>7 times it had been said</p> <p>8 Q Meaning what?</p> <p>9 A That when the flap closed no one else can</p> <p>10 leave at that point</p> <p>11 Q How many times had you heard Mr Ray say</p> <p>12 no one else can leave?</p> <p>13 A One other time</p> <p>14 Q That what is what you testified about</p> <p>15 earlier?</p> <p>16 A Uh-huh</p> <p>17 Q After the flap was closed did you</p> <p>18 continue to hear Kirby breathing?</p> <p>19 A I did</p> <p>20 Q For how much longer?</p> <p>21 A I believe all the way up until the time</p> <p>22 the eighth round and the flap opened to leave</p> <p>23 Q You say you believe?</p> <p>24 A Uh-huh</p> <p>25 Q At some point were you conscious that you</p>	<p style="text-align: right;">215</p> <p>1 A It was in the /AEUGTD round</p> <p>2 Q Tell the jury how many minutes, if you</p> <p>3 know, into the eighth round you then saw the light?</p> <p>4 A I don't know how many minutes</p> <p>5 Q At the time that you saw the light, do</p> <p>6 you recall today whether you could still here Kirby</p> <p>7 breathing?</p> <p>8 A I believe she was still breathing</p> <p>9 Q And when you saw the light, you testified</p> <p>10 earlier you believe it was James Shore who had</p> <p>11 ^ lifted ^ listed up the edge?</p> <p>12 A Yes</p> <p>13 Q Do you have any recollection today how</p> <p>14 high the flap was ^ lifted ^ listed?</p> <p>15 A No</p> <p>16 Q And did you hear anybody respond when</p> <p>17 Mr Shore ^ lifted ^ listed the flap?</p> <p>18 A I heard James Ray say turn off the light</p> <p>19 Q And what happened?</p> <p>20 A The flap went down</p> <p>21 Q</p> <p>22 A Not the flap I'm sorry, the tent</p> <p>23 Q And just to make clear I'll put up</p> <p>24 Exhibit 528 Can you point to the -- again</p> <p>25 understanding that this is not necessarily the side</p>
<p style="text-align: right;">214</p> <p>1 could no long are hear that breathing sound?</p> <p>2 A At some point I was not paying attention</p> <p>3 to my surroundings I was paying attention to</p> <p>4 getting out To completing the process and then I</p> <p>5 went very much inward to complete the process and</p> <p>6 complete So I there was a point where I stopped</p> <p>7 paying attention to my surroundings</p> <p>8 Q Was that during the eighth round?</p> <p>9 A At the end of the eighth round</p> <p>10 Q Did you know before the sweat lodge</p> <p>11 ceremony began how many rounds it was going to be?</p> <p>12 A I understood eight, but that it could be</p> <p>13 more</p> <p>14 Q Why did you understand eight?</p> <p>15 A A couple of reasons, one the number of</p> <p>16 pouches that we had made, were representing</p> <p>17 different aspects of growth and letting go and it</p> <p>18 was said during the briefing</p> <p>19 Q You had testified earlier about the light</p> <p>20 in this area, the second time, when was that with</p> <p>21 respect to the eighth round?</p> <p>22 MR LI Objection Asked and answered Your</p> <p>23 Honor</p> <p>24 THE COURT Overruled</p> <p>25 Q BY MS POLK You can answer?</p>	<p style="text-align: right;">216</p> <p>1 of the tent where you were in, can you points to</p> <p>2 the area where the flap or the edge of the tent was</p> <p>3 ^ lifted ^ listed?</p> <p>4 A Ask me that again</p> <p>5 Q Using this photograph, can you show the</p> <p>6 jury how a light came in?</p> <p>7 A From the bottom, from the bottom</p> <p>8 Q Do you know how high it was</p> <p>9 ^ lifted ^ listed?</p> <p>10 A No, I do not</p> <p>11 Q Do you know how wide the area was where</p> <p>12 it was ^ lifted ^ listed?</p> <p>13 A I don't</p> <p>14 Q After Mr Ray said he said turn out the</p> <p>15 light?</p> <p>16 A Yes</p> <p>17 Q Did the light go away?</p> <p>18 A Yes</p> <p>19 Q Did you hear James Shore say anything?</p> <p>20 A No</p> <p>21 Q Did you hear any sounds coming from James</p> <p>22 Shore after that?</p> <p>23 A I didn't</p> <p>24 Q Did you hear any sounds coming from Kirby</p> <p>25 Brown after that?</p>